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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 381

[Docket No. RM19–14–000]

#### Annual Update of Filing Fees

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; annual update of Commission filing fees.

**SUMMARY:** In accordance with the Commission regulations issues this update of its filing fees. This document provides the yearly update using data in the Commission's Financial System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2018.

**DATES:** Effective Date: May 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Vu-Hang Nguyen, Office of the Executive Director, Federal Energy Regulatory Commission, 999 North Capitol St. NE, Room 24–02, Washington, DC 20426, 202–502–8892.

#### SUPPLEMENTARY INFORMATION:

**Document Availability:** In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

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#### Annual Update of Filing Fees

(Issued April 4, 2019)

The Federal Energy Regulatory Commission (Commission) is issuing this document to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2018 costs. The adjusted fees announced in this document are effective May 10, 2019. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

#### Fees Applicable to the Natural Gas Policy Act

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403) .....	\$ 14,430
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2. Review of a Department of Energy remedial order:	
<i>Amount in controversy</i>	
\$0–9,999. (18 CFR 381.303(b)) .....	100
\$10,000–29,999. (18 CFR 381.303(b)) .....	600
\$30,000 or more. (18 CFR 381.303(a)) .....	42,310
3. Review of a Department of Energy denial of adjustment:	
<i>Amount in controversy</i>	
\$0–9,999. (18 CFR 381.304(b)) .....	100
\$10,000–29,999. (18 CFR 381.304(b)) .....	600
\$30,000 or more. (18 CFR 381.304(a)) .....	22,180
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\* This fee has not been changed.



**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Issued: April 4, 2019.

**Anton C. Porter,**  
*Executive Director.*

In consideration of the foregoing, the Commission amends part 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

**PART 381—FEES**

- 1. The authority citation for part 381 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

**§ 381.302 [Amended]**

- 2. In § 381.302, paragraph (a) is amended by removing “\$27,130” and adding “\$28,990” in its place.

**§ 381.303 [Amended]**

- 3. In § 381.303, paragraph (a) is amended by removing “\$39,610” and adding “\$42,310” in its place.

**§ 381.304 [Amended]**

- 4. In § 381.304, paragraph (a) is amended by removing “\$20,770” and adding “\$22,180” in its place.

**§ 381.305 [Amended]**

- 5. In § 381.305, paragraph (a) is amended by removing “\$7,780” and adding “\$8,310” in its place.

**§ 381.403 [Amended]**

- 6. In § 381.403 is amended by removing “\$13,500” and adding “\$14,430” in its place.

**§ 381.505 [Amended]**

- 7. In § 381.505, paragraph (a) is amended by removing “\$23,330” and adding “\$24,920” in its place and by removing “\$26,410” and adding “\$28,210” in its place.

[FR Doc. 2019–07075 Filed 4–9–19; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9846]

RIN 1545–BO51

**Regulations Regarding the Transition Tax Under Section 965 and Related Provisions; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9846) that were published in the **Federal Register** on Tuesday, February 5, 2019 (84 FR 1838). The final regulations implement section 965 of the Internal Revenue Code (the “Code”). Section 965 was amended by the Tax Cuts and Job Act, which was enacted on December 22, 2017.

**DATES:** This correction is effective on April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Natalie Punchak at (202) 317–6934 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations (TD 9846) that are the subject of this correction are issued under section 965 of the Code.

**Need for Correction**

As published, the final regulations (TD 9846) contain errors that need to be corrected.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—INCOME TAXES**

- **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

- **Par. 2.** Section 1.965–0 is amended by adding the entries for § 1.965–2(j)(5)(i), the introductory language of § 1.965–2(j)(5)(ii), and § 1.965–4(b)(2)(i) to read as follows:

**§ 1.965–0 Outline of section 965 regulations.**

\* \* \* \* \*

**§ 1.965–2 Adjustments to earnings and profits and basis.**

\* \* \* \* \*

(j) \* \* \*

(5) \* \* \*

(i) Facts.

(ii) Analysis.

\* \* \* \* \*

**§ 1.965–4 Disregard of certain transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Overview.

\* \* \* \* \*

- **Par. 3.** Section 1.965–1 is amended by revising paragraph (f)(13)(ii) to read as follows:

**§ 1.965–1 Overview, general rules, and definitions.**

\* \* \* \* \*

(f) \* \* \*

(13) \* \* \*

(ii) *Specified commodity.* The term *specified commodity* means a commodity held, or, for purposes of paragraph (f)(18) of this section, to be held, by a specified foreign corporation that, in the hands of the specified foreign corporation, is property described in section 1221(a)(1) or 1221(a)(8). This paragraph (f)(13)(ii) does not apply with respect to commodities held by a specified foreign corporation in its capacity as a dealer or trader in commodities.

\* \* \* \* \*

- **Par. 4.** Section 1.965–2 is amended by revising paragraphs (b)(2) and (4) to read as follows:

**§ 1.965–2 Adjustments to earnings and profits and basis.**

\* \* \* \* \*

(b) \* \* \*

(2) The treatment of a distribution by the specified foreign corporation to another specified foreign corporation that is made before January 1, 2018, and, in the case of a taxable year of a specified foreign corporation before its last taxable year that begins before January 1, 2018, any other distribution from the specified foreign corporation made before the relevant E&P measurement date, is determined under section 959.

\* \* \* \* \*

(4) The treatment of distributions described in paragraph (b)(2) of this section that are disregarded under § 1.965–4 is redetermined (if necessary) and the treatment of all distributions from the specified foreign corporation other than those described in paragraph

(b)(2) of this section is determined under section 959.

\* \* \* \* \*

■ **Par. 5.** Section 1.965–7 is amended by revising paragraphs (c)(3)(iv)(A)(2) and (c)(3)(iv)(B)(4)(viii) to read as follows:

**§ 1.965–7 Elections, payment, and other special rules.**

\* \* \* \* \*

- (c) \* \* \*
- (3) \* \* \*
- (iv) \* \* \*
- (A) \* \* \*

(2) *Requirement to enter into a transfer agreement.* The shareholder with respect to which a triggering event occurs and an eligible section 965(i) transferee (as defined in paragraph (c)(3)(iv)(B)(1) of this section) must enter into an agreement with the Commissioner that satisfies the requirements of paragraph (c)(3)(iv)(B) of this section.

(B) \* \* \*

(4) \* \* \*

(viii) An acknowledgement that the eligible section 965(i) transferor and any successor to the eligible section 965(i) transferor will remain jointly and severally liable for the section 965(i) net tax liability being assumed by the eligible section 965(i) transferee;

\* \* \* \* \*

■ **Par. 6.** Section 1.965–8 is amended by revising the heading of paragraph (e) and paragraphs (e)(1) and (g)(1)(ii)(B)(2) to read as follows:

**§ 1.965–8 Affiliated groups (including consolidated groups).**

\* \* \* \* \*

(e) *Treatment of a consolidated group or other affiliated group as a single section 958(a) U.S. shareholder or a single person—(1) In general.* All members of a consolidated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of section 965(b), § 1.965–1(b)(2), and § 1.965–3. Furthermore, all members of a consolidated group are treated as a single person for purposes of paragraphs (h), (k), and (n) of section 965 and § 1.965–7. In addition, all members of an affiliated group that are section 958(a) U.S. shareholders of a specified foreign corporation are treated as a single section 958(a) U.S. shareholder for purposes of § 1.965–2(f). Thus, for example, any election governed by section 965(h) and § 1.965–7(b) must be made by the agent (within the meaning of § 1.1502–77) of the group as a single election on behalf of all members of the consolidated group. Similarly, the

determination of whether the transfer of assets by one member to a non-member of the consolidated group would constitute an acceleration event under § 1.965–7(b)(3)(ii)(B) takes into account all of the assets of the consolidated group, which for purposes of this determination, includes all of the assets of each consolidated group member. In analyzing issues relating to the transfer of assets of a consolidated group, appropriate adjustments are made to prevent the duplication of assets or asset value.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) \* \* \*

(2) *Determining section 965(a) inclusion amounts under section 965(b)(5).* Under section 965(b) and paragraph (b) of this section, for purposes of determining the section 965(a) inclusion amount of a section 958(a) U.S. shareholder with respect to a deferred foreign income corporation, if, after applying § 1.965–1(b)(2), the section 958(a) U.S. shareholder is an E&P net surplus shareholder, then the U.S. dollar amount of the section 958(a) U.S. shareholder's pro rata share of the section 965(a) earnings amount of the deferred foreign income corporation is further reduced (but not below zero) by the deferred foreign income corporation's allocable share of the section 958(a) U.S. shareholder's applicable share of the affiliated group's aggregate unused E&P deficit. USS3 is the only E&P net deficit shareholder in the USP Group, and, therefore, the aggregate unused E&P deficit of the USP Group is equal to USS3's excess aggregate foreign E&P deficit (\$100x). The applicable share of the USP Group's aggregate unused E&P deficit of each of USS1 and USS2, respectively, is an amount that bears the same proportion to the USP Group's aggregate unused E&P deficit as the product of the group ownership percentage of USS1 and USS2, respectively, multiplied by the amount that would (but for section 965(b)(5) and paragraph (b) of this section) constitute the aggregate section 965(a) inclusion amount of USS1 and USS2, respectively, bears to the aggregate of such amounts with respect to both USS1 and USS2. Therefore, USS1's applicable share of the USP Group's aggregate unused E&P deficit is \$40 (\$100x × (\$200x/(\$200x + \$300x))) and USS2's applicable share of the USP Group's aggregate unused E&P deficit is \$60x (\$100x × (\$300x/(\$200x + \$300x))). Because USS1 is a section 958(a) U.S. shareholder with respect to only one

deferred foreign income corporation, the entire \$40x of USS1's applicable share of the USP Group's aggregate unused E&P deficit is treated as CFC1's allocable share of USS1's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS1's section 965(a) inclusion amount with respect to CFC1 is reduced to \$160x (\$200x – \$40x). Because USS2 is a section 958(a) U.S. shareholder with respect to only one deferred foreign income corporation, the entire \$60x of USS2's applicable share of the USP Group's aggregate unused E&P deficit is treated as CFC3's allocable share of USS2's applicable share of the USP Group's aggregate unused E&P deficit, and thus USS2's section 965(a) inclusion amount with respect to CFC3 is reduced to \$240x (\$300x – \$60x).

**Martin V. Franks,**

Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).

[FR Doc. 2019–07012 Filed 4–9–19; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9846]

RIN 1545–BO51

### Regulations Regarding the Transition Tax Under Section 965 and Related Provisions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations; correction.

**SUMMARY:** This document contains a correction to final regulations (TD 9846) that were published in the **Federal Register** on Tuesday, February 5, 2019 (84 FR 1838). The final regulations implement section 965 of the Internal Revenue Code (the “Code”). Section 965 was amended by the Tax Cuts and Job Act, which was enacted on December 22, 2017.

**DATES:** This correction is effective on April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Natalie Punchak at (202) 317–6934 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

The final regulations (TD 9846) that are the subject of this correction are issued under section 965 of the Code.

## Need for Correction

As published, the final regulations (TD 9846) contain errors that may prove to be misleading and are in need of clarification.

## Correction of Publication

Accordingly, the final regulations (TD 9846), that are the subject of FR Doc. 2019-00265, are corrected as follows:

On page 1874, in the preamble, the second column, under the caption “Special Analyses,” is amended by adding section VI. to read as follows:

### VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et. seq.*) (“CRA”). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines.

Pursuant to section 808(2) of the CRA, the Treasury Department and the IRS find, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest. The Treasury Department and the IRS have determined that the rules in this Treasury decision shall take effect on December 22, 2017. December 22, 2017, is the date that section 965 in its current form was enacted. Section 965 applies to the last taxable year of foreign corporations that began before January 1, 2018, and to the taxable years of United States persons in which such taxable years of foreign corporations end. This means that the statute is currently effective, and taxpayers may be required to make payments under section 965 on a U.S. federal income tax return for 2017 or 2018 tax years. These final regulations provide crucial guidance for taxpayers on how to apply the rules of section 965, correctly calculate their liability under section 965, and accurately file their U.S. Federal income tax returns. Because the statute already requires taxpayers to comply with section 965, a 60-day delay

in the effective date is unnecessary and contrary to the public interest.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).*

[FR Doc. 2019-07018 Filed 4-9-19; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

[Docket Number USCG-2019-0051]

RIN 1625-AA08

### Special Local Regulation; Choptank River, Cambridge, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for certain navigable waters of the Choptank River. This action is necessary to provide for the safety of life on these waters located at Cambridge, MD, on May 11, 2019, during a morning swim event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

**DATES:** This rule is effective from 8 a.m. to 11 a.m. on May 11, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0051 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PATCOM Coast Guard Patrol Commander  
§ Section  
U.S.C. United States Code

## II. Background Information and Regulatory History

The TCR Event Management of St. Michaels, MD, notified the Coast Guard that it will be conducting a swim event on the morning of May 11, 2019. The open water swim starts at the beach of Bill Burton Fishing Pier State Park at Trappe, MD, proceeds across the Choptank River along and between the fishing piers and the Senator Frederick C. Malkus, Jr. Memorial (US-50) Bridge, and finishes at the beach of the Dorchester County Visitors Center at Cambridge, MD. In response, on February 26, 2019, the Coast Guard published an NPRM titled “Special Local Regulation; Choptank River, Cambridge, MD” (84 FR 6107). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this paddle race. During the comment period that ended March 28, 2019, we received no comments.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The COTP Maryland-National Capital Region has determined that potential hazards associated with the swim will be a safety concern for anyone intending to operate in or near the swim area. The purpose of this rule is to protect event participants, spectators, and transiting vessels on specified waters of the Choptank River before, during, and after the scheduled event.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 26, 2019. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM. However, there are two small, nonsubstantive changes. The first change is in paragraph (a), to the definition of “participants.” The proposed rule stated the event name as the Flying Point Park Outboard Regatta. The name of the event has been changed to the Maryland Freedom Swim. The second change is a slight modification in the paragraphing structure of paragraph (b). There were no changes to the regulatory text of paragraph (b).

This rule establishes a special local regulation from 8 a.m. to 11 a.m. on May 11, 2019. The regulated area will cover all navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35′14.2″ N, longitude 076°02′33.0″ W, thence south to latitude 38°34′08.3″ N,

longitude 076°03'36.2" W, and bounded on the west by a line drawn from latitude 38°35'32.7" N, longitude 076°02'58.3" W, thence south to latitude 38°34'24.7" N, longitude 076°04'01.3" W, located at Cambridge, MD. The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the open water swim, scheduled from 9 a.m. to 10:45 a.m. on May 11, 2019. Except for participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as Official Patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. If permission is granted by the COTP or PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official Patrol vessels will direct spectator vessels while within the regulated area. Vessels will be prohibited from loitering within the navigable channel.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, time of day and duration of the regulated area, which will impact a small designated area of the Choptank River for 3 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the COTP or PATCOM deems it safe to do so.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States. The temporary regulated area will be enforced for three hours during the open water swim. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.501T05–0051 to read as follows:

##### **§ 100.501T05–0051 Special Local Regulation; Choptank River, Cambridge, MD.**

(a) *Definitions.* As used in this section:

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Coast Guard Patrol Commander (PATCOM)* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National

Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participants* means all persons and vessels registered with the event sponsor as participating in the Maryland Freedom Swim or otherwise designated by the event sponsor as having a function tied to the event.

*Spectators* means all persons and vessels not registered with the event sponsor as participants or assigned as official patrols.

(b) *Regulated area.* All navigable waters of the Choptank River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°35'14.2" N, longitude 076°02'33.0" W, thence south to latitude 38°34'08.3" N, longitude 076°03'36.2" W, and bounded on the west by a line drawn from latitude 38°35'32.7" N, longitude 076°02'58.3" W, thence south to latitude 38°34'24.7" N, longitude 076°04'01.3" W, located at Cambridge, MD. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. to 11 a.m. on May 11, 2019.

Dated: April 5, 2019.

**Joseph B. Loring,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2019-07070 Filed 4-9-19; 8:45 am]

**BILLING CODE 9110-04-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[Docket No. USCG-2019-0045]

##### **Safety Zone; Tchefuncte River, Madisonville, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone for a fireworks display located on the navigable waters of the Tchefuncte River in front of the Madisonville Town Hall for the annual Fourth of July celebration. This action is needed to provide for the safety of life on these navigable waterways during this event.

**DATES:** The regulations in 33 CFR 165.801, Table 5, line 15 will be enforced from 8 p.m. through 9 p.m. on July 4, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard;

telephone 504-365-2281, email [Benjamin.P.Morgan@uscg.mil](mailto:Benjamin.P.Morgan@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone located in 33 CFR 165.801, Table 5, line 15 for the Madisonville Old Fashioned 4th of July event. The regulations will be enforced from 8 p.m. through 9 p.m. on July 4, 2019. This action is being taken to provide for the safety of life on these navigable waterways during this event. Our regulations for marine events within the Eighth Coast Guard District, 33 CFR 168.801, as updated by **Federal Register** Document 83 FR 55488, specifies the location of the regulated area on the Tchefuncte River at approximate position 30°24'11.63" N 090°09'17.39 W, in front of the Madisonville Town Hall. During the enforcement period, if you are the operator of a vessel in the regulated area, you must comply with directions from Captain of the Port Sector New Orleans or a designated representative.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: April 2, 2019,  
**K.M. Luttrell**,  
*Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.*

[FR Doc. 2019-06947 Filed 4-9-19; 8:45 am]

**BILLING CODE 9110-04-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1236

[FDMS No. NARA-18-0003; NARA-2019-018]

RIN 3095-AB98

### Electronic Records Management

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** We are revising our electronic records management regulation to include standards for digitizing temporary Federal records so that agencies may dispose of the original source records, where appropriate and in accordance with the Federal Records Act amendments of 2014.

**DATES:** This regulation is effective on May 10, 2019.

**ADDRESSES:** Regulatory and External Policy Program, Strategy & Performance Division (MP); Suite 4100; National Archives and Records Administration;

8601 Adelphi Road; College Park, MD 20740-6001.

### FOR FURTHER INFORMATION CONTACT:

Kimberly Keravuori, by email at [regulation\\_comments@nara.gov](mailto:regulation_comments@nara.gov), or by telephone at 301.837.3151. Contact [acps@nara.gov](mailto:acps@nara.gov) with any questions on records management and digitization.

### SUPPLEMENTARY INFORMATION:

#### Background

In 2014, the Federal Records Act at 44 U.S.C. 3302 was amended by Public Law 113-87 to require NARA to issue standards for reproducing records digitally 'with a view toward the disposal of original records.' The amendment applies to both temporary and permanent records. This rule sets standards for digitizing temporary records so that agencies may establish appropriate processes. Temporary records constitute the majority of Federal records; agencies retain them for a specific period of time, as established by records schedules. At the end of the scheduled retention period, agencies then destroy the temporary records. Digitization standards for temporary records ensure that agencies can continue to use the digital versions for the same purposes as the original records for the duration of that time period.

In this rulemaking, in addition to issuing digitization standards for temporary records, we are also removing 36 CFR 1236.1 because it restates the authorities already cited in the authority line.

#### Proposed Rule and Public Comments

We published this rulemaking in the **Federal Register** as a proposed rule on September 10, 2018 (83 FR 45587) with a 60-day public comment period. We received 19 comments on the proposed rule. Several of them involved questions and requests for clarification regarding digitizing permanent Federal and Presidential records or asking about specific technical standards. However, this regulation does not cover such records. It covers only temporary Federal records. One comment asked that we specifically state that the new Subpart D does not apply to permanent records, but we feel that the title, "Digitizing Temporary Federal Records," is sufficient to make that clear.

For temporary records, the standards will be as they are stated in this regulation. While permanent records require more rigorous quality standards for archival reasons, most temporary records do not need to meet those standards. Because the needs and uses

for temporary records differ vastly across the Government, it is not reasonable to set a single baseline image quality or other similar standards; different standards will serve to meet the business needs for different records. As a result, this regulation focuses on the uses of the digitized records as the benchmark for effective digitization and requires that agencies ensure the digitized records can be used for all the purposes of the original source records. In some cases, that may involve higher image quality than in other cases. We will be issuing FAQs and guidance to agencies on applying the requirements to certain categories of records, as appropriate.

Several other comments asked us to clarify the validation requirements and process, whether agencies may develop their own process, and whether validation requires submitting to NARA for approval. We have revised the validation section to clarify that agencies must validate that the digitized versions are able to be used for all the purposes of the original records, and may use their own process or a third-party process to check the validity of the digitized versions. We also clarified that agencies do not need to seek NARA approval as part of validation. NARA may, however, review agency documentation of the validation process.

In the course of responding to the comments, we realized there was confusion about records schedule retention periods and disposing of original source records. Original source records do not become non-record copies when they have been digitized. As a result, they must still be treated as Federal records. They become intermediary records and may then be destroyed or retained according to the appropriate records schedule (either General Records Schedule 5.2 for intermediary records or an agency-specific records schedule governing the digitized records). We have noted this in the revised regulation as well.

A commenter asked if we would be addressing Employee Medical File System documents and setting digitization standards for these documents, including x-rays. The Employee Medical Folder (EMF) for the majority of agencies is under the recordkeeping authority of the Office of Personnel Management (OPM), not NARA. The Civilian Personnel Records Center (CPR/NPRC) stores and services the EMF for the owner of the record (OPM) and responds to requests for the documents. The EMF is currently retired to CPR/NPRC in paper form.

OPM created a system in approximately 2007 to support an electronic Official Personnel Folder (OPF) but only the OPF is supported through that system. Because NARA will no longer accept paper/analog records for storage at a Federal records center after December 31, 2022, NARA has reached out to OPM to identify the impact to the paper EMF and recommend OPM consider the timeline needed to create an electronic EMF by that deadline. The x-ray will need to be addressed as part of the EMF. The dialogue continues with OPM concerning the electronic EMF under their recordkeeping authority. NARA will continue to store and service paper/analog records received by Federal records centers through December 31, 2022, until their scheduled disposition date. As a result, this regulation does not address EMFs or how NPRC would accept digital records. NARA will, of course, work with OPM on updating OPM/GOVT-10 EMFs as appropriate.

Another commenter asked that we clarify that the rule does not authorize an agency to destroy after digitization any records with a legal hold or that are subject to civil, criminal, or administrative proceedings. We have added clarifying language to address this comment. One commenter asked that we add a definition of “information,” and another asked for a definition of “digitizing.” We feel there is no need for a definition of “information”; it has already been defined in many contexts, and we do not feel an additional one would be helpful. However, we have added a definition of “digitizing,” because it is a new term within the records management arena. We have also made editorial revisions to make the revised rule easier to read and use.

### Digitizing Permanent Records and Electronic Records Rulemaking

We are currently developing standards for digitizing permanent records, which we will publish as an upcoming rulemaking. Until these standards are published as a rule, we recommend that agencies discuss digitization projects with their general counsel before disposing of any original permanent records.

While we develop the standards necessary for digitizing permanent Federal records, agencies should continue to follow the process in the General Records Schedule, 36 CFR 1225.24, and NARA Bulletin 2010-04, Guidance Concerning Notifications for Previously Scheduled Permanent Records (<https://www.archives.gov/records-mgmt/bulletins/2010/2010-04.html>).

We are also working on revisions to the rest of 36 CFR 1236, regarding electronic records management, which will be reflected in future rulemakings.

### Regulatory Review Information

This rule is not a significant regulatory action for the purposes of E.O. 12866 and a significance determination was requested from the Office of Management and Budget (OMB). As a result, this rule is also not subject to deregulatory requirements contained in E.O. 13771. It is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities; it applies only to agency efforts to digitize temporary records. This rule also does not have any Federalism implications and does not contain any collections of information under the Paperwork Reduction Act.

### List of Subjects in 36 CFR Part 1236

Archives and records, Electronic records, Records management.

For the reasons stated in the preamble, NARA amends 36 CFR part 1236 as follows:

### PART 1236—ELECTRONIC RECORDS MANAGEMENT

- 1. Revise the authority citation for part 1236 to read as follows:

**Authority:** 44 U.S.C. 2904, 3101, 3102, 3105, 3301, 3302, and 3312.

#### § 1236.1 [Removed]

- 2. Remove § 1236.1.

- 3. In § 1236.2, in paragraph (b), add a definition of “Digitizing” in alphabetical order to read as follows:

#### § 1236.2 What definitions apply to this part?

\* \* \* \* \*

(b) \* \* \*

*Digitizing* is the process of converting paper or analog records into electronic records.

\* \* \* \* \*

- 4. Add subpart D to read as follows:

### Subpart D—Digitizing Temporary Federal Records

Sec.

1236.30 Requirements for digitizing temporary records.

1236.32 Digitization standards.

1236.34 Validating digitization.

1236.36 Disposing of original source records.

### § 1236.30 Requirements for digitizing temporary records.

(a) If an agency intends to digitally reproduce (digitize) temporary records in order to designate the digitized version as the recordkeeping copy and destroy the original source records, the agency must: (1) Digitize the record to the standards in § 1236.32; and (2) validate the digitization according to § 1236.34.

(b) When the agency designates the digitized version as the recordkeeping copy, the original source record becomes an intermediary record. Agencies may dispose of intermediary records according to § 1236.36.

### § 1236.32 Digitization standards.

When digitizing temporary records, agencies must meet the following standards:

(a) Capture all information contained in the original source records;

(b) Include all the pages or parts from the original source records;

(c) Ensure the agency can use the digitized versions for all the purposes the original source records serve, including the ability to attest to transactions and activities;

(d) Protect against unauthorized deletions, additions, or alterations to the digitized versions; and

(e) Ensure the agency can locate, retrieve, access, and use the digitized versions for the records' entire retention period.

### § 1236.34 Validating digitization.

(a) Agencies must validate that the digitized versions are of suitable quality to replace original source records.

(b) Agencies may establish their own validation process or make use of third-party processes to validate that the digitized versions comply with § 1236.32. The process may be project-based or agency-wide policy.

(c) Agencies must document the validation process and retain that documentation for the life of the process or the life of any records digitized using that process, whichever is longer.

(d) NARA may review validation documentation as needed.

### § 1236.36 Disposing of original source records.

(a) When an agency has validated that the digitized versions meet the standards in § 1236.32, the agency may destroy the original source records pursuant to General Records Schedule (GRS) 5.2 (intermediary records) or an agency-specific records schedule that addresses disposition after digitization, subject to any pending legal constraint on the agency, such as a litigation hold.



(b) The agency must treat the digitized versions, now the recordkeeping versions, in the same way it would have treated the original source records. The agency must retain the digitized versions for the remaining portion of any retention period established by the applicable records schedule.

(c) Agencies do not need to obtain NARA approval to destroy scheduled temporary records they have digitized according to this part.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2019-06916 Filed 4-9-19; 8:45 am]

BILLING CODE 7515-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2018-0353; FRL-9991-76-Region 8]

### Clean Data Determination; Provo, Utah 2006 Fine Particulate Matter Standards Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a clean data determination (CDD) for the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) Provo, Utah (UT) nonattainment area (NAA). The determination was based upon quality-assured, quality-controlled and certified ambient air monitoring data for the period 2015–2017; available in the EPA's Air Quality System (AQS) database, showing the area has monitored attainment of the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). Based on this determination that the Provo, UT NAA is currently attaining the 24-hour PM<sub>2.5</sub> NAAQS, the EPA is also finalizing a determination that the obligation for Utah to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is not applicable for as long as the area continues to attain the NAAQS.

**DATES:** This rule is effective on May 10, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0353. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:**

Crystal Ostigaard, Air Program, U.S. EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, [ostigaard.crystal@epa.gov](mailto:ostigaard.crystal@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document “we,” “us,” and “our” means the EPA.

### I. Background

On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour PM<sub>2.5</sub> NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup>. On November 13, 2009 (74 FR 58688), the EPA designated several areas as nonattainment for the 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>, including the Provo, UT NAA.

On February 12, 2019 (84 FR 3373), the EPA proposed a CDD for the 2006 24-hour PM<sub>2.5</sub> Provo, UT NAA based on the area's current attainment of the standard. Pursuant to 40 CFR 51.1015(a) and (b), the EPA proposed to determine that the obligation to submit any remaining attainment-related state implementation plan (SIP) revisions arising from classification of the Provo, UT area as a Moderate NAA and subsequent reclassification as a Serious NAA under subpart 4 of part D (of title I of the Act) for the 2006 24-hour PM<sub>2.5</sub> NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. However, the CDD does not suspend Utah Division of Air Quality's (UDAQ's) obligation to submit nonattainment-related requirements, which includes the base-year emission inventory, nonattainment new source review (NNSR) revisions, and best available control measures/best available control technologies (BACM/BACT). This action does not constitute a redesignation to attainment under CAA section 107(d)(3). Additional detail can be found in the February 12, 2019 (84 FR 3373) proposed action.

### II. Response to Comments

The EPA did not receive any comments on the proposed action.

### III. Final Action

The EPA is finalizing a CDD for the 2006 24-hour PM<sub>2.5</sub> Provo, UT NAA based on the area's current attainment of the standard. Pursuant to 40 CFR 51.1015(a) and (b), the EPA is determining that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Provo, UT area as a Moderate NAA and subsequent reclassification as a Serious NAA under subpart 4 of part D (of title I of the Act) for the 2006 24-hour PM<sub>2.5</sub> NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. In particular, as discussed in the proposed action (84 FR 3373), the obligation for UDAQ to submit attainment demonstrations, projected emissions inventories, RACM (including RACT), reasonable further progress (RFP) plans, motor vehicle emissions budgets (MVEB), quantitative milestones, and contingency measures, for the Provo, UT area are suspended until such time as: (1) The area is redesignated to attainment, after which such requirements are permanently discharged; or (2) the EPA determines that the area has re-violated the PM<sub>2.5</sub> NAAQS, at which time the state shall submit such attainment plan elements for the Moderate and Serious NAA plans by a future date to be determined by the EPA and announced through publication in the **Federal Register** at the time the EPA determines the area is violating the PM<sub>2.5</sub> NAAQS.

However, the CDD does not suspend UDAQ's obligation to submit non-attainment-related requirements, which includes the base-year emission inventory, NNSR revisions, and BACM/BACT. This action does not constitute a redesignation to attainment under CAA section 107(d)(3).

### IV. Statutory and Executive Order Reviews

This action finalizes a determination of attainment based on air quality and suspends certain federal requirements, and thus would not impose additional requirements beyond those imposed by state law. For this reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866;



- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a

“major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 2, 2019.

**Debra Thomas,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2019–06820 Filed 4–9–19; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2018–0018; FRL–9991–95–Region 4]

#### Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), with letters dated August 25, 2017 and March 15, 2018. The SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make amendments to Jefferson County’s regulation regarding the prevention of significant deterioration (PSD) permitting program. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective May 10, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2018–0018. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017 and March 15, 2018.<sup>1</sup> EPA is finalizing approval of portions of these SIP revisions that make changes to the District’s Regulation 2.05—*Prevention of Significant Deterioration of Air Quality*, which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA. These revisions are intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements, as promulgated by EPA.<sup>2</sup> The August 25,

<sup>1</sup> EPA notes that the Agency received the SIP revisions on August 29, 2017 and March 23, 2018.

<sup>2</sup> EPA’s regulations governing the implementation of New Source Review (NSR) permitting programs are contained in 40 CFR 51.160–51.166; 52.21,

2017, SIP revision updates the incorporation by reference (IBR) date found at Regulation 2.05 from July 1, 2010 to July 15, 2016, for the federal PSD permitting regulations at 40 CFR 52.21. Subsequently, the March 15, 2018, SIP revision updates the IBR date at Jefferson County's Regulation 2.05 to July 15, 2017. By updating the IBR date for 40 CFR 52.21, Jefferson County is making the following changes to their PSD regulations: (1) Adopting "increments" for the PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS); (2) adopting updated greenhouse gases provisions; (3) incorporating grandfathering provisions for the 2012 primary annual PM<sub>2.5</sub> NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repeal of grandfathering provisions for the previous PM<sub>2.5</sub> NAAQS; and (4) incorporating a correction to the definition of "regulated NSR pollutant" for PSD.

In a notice of proposed rulemaking (NPRM) published on February 1, 2019, (84 FR 1016), EPA proposed to approve the aforementioned changes to Jefferson County's Regulation 2.05, which addressed the federal PSD permitting requirement through the IBR date for 40 CFR 52.21.<sup>3</sup> Comments on the NPRM were due on or before March 4, 2019.

52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, nonattainment NSR (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—"unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—"nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

<sup>3</sup> EPA has not approved, and is not currently approving into the Jefferson County portion of the Kentucky SIP, the provisions of the Ethanol Rule (May 1, 2007, 72 FR 24060), that seek to exclude facilities that produce ethanol through a natural fermentation process, from the definition of "chemical process plants" in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, EPA notes that the PSD provisions found at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c), regarding the Fugitive Emissions Rule (December 19, 2008; 73 FR 77882), were initially stayed for an 18-month period on March 31, 2010, and subsequently stayed indefinitely by the Fugitive Emissions Interim Rule, on March 30, 2011 (76 FR 17548). These fugitive emissions provisions are automatically stayed in the Jefferson County portion of the Kentucky SIP, under the SIP-approved "automatic rescission clause" at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn.

EPA received no adverse comments on the proposed action, therefore EPA is now taking final action to approve the above-referenced revision.

## II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County's Regulation 2.05, *Prevention of Significant Deterioration of Air Quality*, version 13, which is intended to make the Jefferson County PSD permitting regulations consistent with the federal requirements and became state effective January 17, 2018. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

## III. Final Action

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two SIP revisions dated August 25, 2017 and March 15, 2018, to update the IBR date for the federal requirements of the PSD program found at 40 CFR 52.21. Through these SIP revisions, the IBR date at Jefferson County's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality*, is updated to July 15, 2017. EPA is approving these SIP revisions because the Agency has determined that they are consistent with the CAA and would not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any other applicable requirement.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

<sup>4</sup> See 62 FR 27968 (May 22, 1997).

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart (S)—Kentucky

■ 2. In § 52.920, table 2 in paragraph (c) is amended under "Reg 2—Permit Requirements" by revising the entry for "2.05" to read as follows:

#### § 52.920 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
*	*	*	*	*

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
*	*	*	*	*	*
Reg 2—Permit Requirements					
2.05	Permits	4/10/2019	[Insert Federal Register citation].	01/17/18	This approval does not include Jefferson County's revisions to incorporate by reference the Ethanol Rule (May 1, 2007), of the Fugitives Emissions Rule (December 19, 2008).
*	*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2019-07020 Filed 4-9-19; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2018-0723; FRL-9991-74-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Interstate Transport for the 2008 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a submittal from the State of Wyoming that

demonstrates that the Wyoming State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Specifically, the submittal meets the requirement that Wyoming's SIP contain adequate provisions to prohibit emissions in amounts which will interfere with maintenance of the 2008 ozone NAAQS in any other state. The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on May 10, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0723. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" means the EPA.

### I. Background

On February 3, 2017 (82 FR 9142), the EPA disapproved Wyoming's February 6, 2014 2008 ozone infrastructure SIP

submittal with respect to the CAA section 110(a)(2)(D)(i)(I) requirements regarding emissions from Wyoming that would interfere with maintenance (“prong 2”) of the 2008 ozone NAAQS in any other state. Under CAA section 110(c)(1), this disapproval started a 2-year clock for the EPA to promulgate a federal implementation plan (FIP) unless Wyoming submitted, and the EPA approved, a SIP revision correcting the deficiency. On October 17, 2018, Wyoming submitted a SIP revision to address the EPA’s February 3, 2017 disapproval.

On February 12, 2019 (84 FR 3389), the EPA proposed to approve Wyoming’s October 17, 2018 submittal. An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for the proposed approval ended on March 14, 2019. We did not receive any comments on the proposal.

## II. Final Action

For the reasons given in our February 12, 2019 notice, we are approving Wyoming’s October 17, 2018 submittal addressing CAA section 110(a)(2)(D)(i)(I), prong 2, for the 2008 ozone NAAQS. With this final approval, the EPA no longer has an obligation under CAA section 110(c)(1) to promulgate a FIP addressing the deficiency identified in the EPA’s February 3, 2017 prong 2 disapproval (82 FR 9142).

## III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 2, 2019.

**Debra Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart ZZ—Wyoming

■ 2. Section 52.2620 is amended by adding to the table in paragraph (e), in numerical order, an entry for “(33) XXXIII” to read as follows:

### § 52.2620 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
(33) XXXIII .....	Interstate transport SIP for Section 110(a)(2)(D)(i)(I) prong 2 for the 2008 Ozone NAAQS.	August 30, 2018 .....	5/10/2019	[Insert <b>Federal Register</b> citation] 4/10/2019.	

[FR Doc. 2019-06821 Filed 4-9-19; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2018-0023; FRL-9990-80-Region 10]

### Air Plan Approval; Oregon; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating materials incorporated by reference (IBR) into the Oregon State Implementation Plan (SIP). The regulations affected by this update were previously submitted by the Oregon Department of Environmental Quality (ODEQ) and approved by the EPA. In this action the EPA is also notifying the public of corrections to typographical errors and rearranging the contents for clarity. In addition, the EPA is removing duplicative rules in the Code of Federal Regulations (CFR) for the State of Oregon to improve cost effectiveness and usability of the CFR. This update makes no substantive changes to the Oregon SIP and imposes no new requirements. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective April 10, 2019.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 10, Office of Air and Waste (OAW-150), 1200 Sixth Avenue, Seattle, WA 98101; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. To view the materials at the Region 10

Office, the EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Christi Duboiski, EPA Region 10, 1200 6th Ave, Suite 155, Seattle, WA 98101, (360) 753-9081, or [duboiski.christi@epa.gov](mailto:duboiski.christi@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to EPA.

#### I. Background

The State Implementation Plan (SIP) is a living document a State revises as necessary to address its unique air pollution problems. Therefore, from time to time, the Environmental Protection Agency (EPA) must act on SIP revisions containing new and revised regulations, approving and incorporating them into the SIP. On May 22, 1997, the EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultation between the EPA and the Office of the Federal Register (OFR) (62 FR 27968). The description of the revised SIP document, the incorporation by reference (IBR) procedures and the “Identification of plan” format are discussed in further detail in the May 22, 1997, **Federal Register** document. On December 10, 2013, the EPA published a **Federal Register** document beginning the new IBR procedure for Oregon (78 FR 74012).

Since then, the EPA has approved and incorporated by reference several provisions of the Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), Lane Regional Clean Air Protection Agency (LRAPA) rules, and City and County Ordinances into the Oregon SIP. The following **Federal Register** documents contain information on each approved action: 79 FR 29359, May 22, 2014; 79 FR 35693, June 24, 2014; 80 FR 2313, January 16, 2015; 80 FR 44864, July 28, 2015; 80 FR 45431, July 30, 2015; 80 FR 51470, August 25, 2015; 80 FR 64346, October 23, 2015; 80 FR 65655, October 27, 2015; 80 FR 79266, December 21, 2015; 81 FR 30181, May 16, 2016; 81 FR 36176, June 6, 2016; 81 FR 46612, July 18, 2016; 81 FR

47029, July 20, 2016; 81 FR 72714, October 21, 2016; 82 FR 47122, October 11, 2017; 83 FR 5537, February 8, 2018; 83 FR 22853, May 17, 2018; 83 FR 24034, May 24, 2018; 83 FR 47073, September 18, 2018; 83 FR 50274, October 5, 2018 and 83 FR 63579, December 11, 2018.

#### II. EPA Action

This action represents the EPA’s publication of the Oregon SIP update, appearing in 40 CFR part 52, subpart MM, as of March 1, 2019. The EPA is correcting minor typographical errors throughout, making formatting changes to the IBR tables in § 52.1970(c) and (d) and rearranging and republishing the contents of § 52.1970(e). This administrative action constitutes a “housekeeping” exercise to ensure all revisions to the State programs that have occurred are accurately reflected in 40 CFR part 52 and typographical errors are corrected. In this action, the EPA is doing the following:

##### A. Section 52.1970(b)

1. Revising text to announce an update to the IBR material with an approval date prior to March 1, 2019.
2. Revising text to update the addresses at which the public can inspect the IBR materials.

##### B. Section 52.1970(c), Table 2

1. Correcting several **Federal Register** citations to reflect the first page of the preamble, as opposed to the regulatory text page.
2. Correcting entry 209-0070 *Hearing Procedures* by moving it from § 52.1970(c) table 2 to § 52.1970(e) table 2. On March 22, 2017, the EPA proposed to approve OAR 340-209-0070, but not incorporate it by reference to avoid confusion or potential conflict with the EPA’s independent authorities (82 FR 14654). However, in the final **Federal Register** document, the EPA incorporated by reference OAR 340-209-0070 in error (82 FR 47122, March 11, 2017).
3. Correcting rule exceptions listed in the explanation column but inadvertently associated with incorrect entries. The exceptions for entry 244-0244 is corrected to be aligned with entry 244-0240, and the exceptions for

entry 244–0248 is corrected to be aligned with entry 244–0242 (80 FR 65655, October 27, 2015, footnotes 6 and 7 on page 65658).

4. Adding a footnote to clarify that EPA's approval is limited to the extent the provisions relate to section 110 of the CAA and determining compliance with and for the purposes of implementation of SIP-approved requirements.

#### C. Section 52.1970(c), Table 3

1. Correcting and clarifying dates for EPA-approved city and county ordinances.

#### D. Section 52.1970(d)

1. Changing the section title and a column heading to better reflect content.

2. Adding a footnote to explain the EPA's authority to remove source-specific requirements.

3. Removing permit expiration dates that were inadvertently included.

4. Reorganizing entries to appear in chronological order based on the EPA approval dates.

5. Providing clarification to permit conditions cited as approved for Cascade General and White Consolidated Inc. (62 FR 10455, March 7, 1997).

#### E. Section 52.1970(e)

1. Reformatting sections by tables (tables 1–5) and republishing content.

2. Revising table titles and column headings to better reflect content.

3. Adding entry 209–0070 *Hearing Procedures* to table 2. See section II.B.2. for detailed explanation.

4. Providing additional clarification in table 5, section 4 for the 2012 PM<sub>2.5</sub> Attainment Plan for Oakridge-Westfir to reflect our approval of the Oakridge-Westfir attainment date extension (81 FR 46612, July 18, 2016).

Finally, as part of this general “housekeeping” exercise, the following sections of 40 CFR part 52, subpart MM, have been relocated to § 52.1970(e), nonregulatory provisions that are approved but not incorporated by reference; § 52.1989 “Interstate Transport for the 1997 8-hour ozone NAAQS and 1997 PM<sub>2.5</sub> NAAQS”, § 52.1990 “Interstate Transport for the 2006 24-hour PM<sub>2.5</sub> NAAQS”, and § 52.1991 “Section 110(a)(2) infrastructure requirements”. The EPA has determined §§ 52.1989, 52.1990 and 52.1991 are duplicative of the reorganized “Identification of plan” section in 40 CFR 52.1970(e). Therefore, the EPA is removing and reserving §§ 52.1989, 52.1990 and 52.1991.

The EPA has determined that this action falls under the “good cause”

exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA), which, upon finding “good cause,” authorizes agencies to dispense with public participation, and section 553(d)(3) of the APA, which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs appearing in the CFR. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Oregon SIP compilation in 40 CFR part 52, subpart MM, notice of typographical corrections to the “Identification of Plan” § 52.1970 (which includes table entry corrections), incorporation of material from §§ 52.1989, 52.1990 and 52.1992 into § 52.1970(e) and removal of duplicative material, and reorganization of tables in § 52.1970(e).

### III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Oregon described in the amendments to 40 CFR part 52 set forth below and Federally-approved prior to March 1, 2019. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. This notification of administrative change does not impose additional

requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

The EPA also believes the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Oregon SIP compilations previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for Oregon.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 4, 2019.

**Michelle L. Pirzadeh,**  
*Acting Regional Administrator, Region 10.*

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart MM—Oregon

- 2. Amend § 52.1970 by revising paragraphs (b) through (e) to read as follows:

##### § 52.1970 Identification of plan.

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approval date

prior to March 1, 2019, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with the EPA approval dates on or after March 1, 2019, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 10 certifies that the rules and regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 2019.

(3) Copies of the materials incorporated by reference may be inspected at EPA Region 10, 1200 Sixth Ave, Seattle, WA 98101; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) *EPA approved regulations and statutes.*

TABLE 1—EPA APPROVED OREGON STATE STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
ORS 477.515 .....	Permits .....	1971	11/1/2001, 66 FR 55105 ....	Permits required for fires on forestlands; waiver, permit conditions, smoke management plan; restricted areas, rules and accepted areas.

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>

State citation	Title/subject	State effective date	EPA approval date	Explanations
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#### CHAPTER 340—DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Division 21 General Emission Standards for Particulate Matter

#### Industrial Contingency Requirements for PM-10 Nonattainment Areas

021-200 .....	Purpose .....	5/1/1995	9/21/1999, 64 FR 51051.	
021-205 .....	Relation to Other Rules .....	3/10/1993	2/25/1997, 62 FR 8385.	
021-210 .....	Applicability .....	3/10/1993	2/25/1997, 62 FR 8385.	
021-215 .....	Definitions .....	3/10/1993	2/25/1997, 62 FR 8385.	
021-220 .....	Compliance Schedule for Existing Sources.	3/10/1993	2/25/1997, 62 FR 8385.	
021-225 .....	Wood Waste Boilers .....	3/10/1993	2/25/1997, 62 FR 8385.	
021-230 .....	Wood Particle Dryers at Particleboard Plants.	3/10/1993	2/25/1997, 62 FR 8385.	
021-235 .....	Hardboard Manufacturing Plants.	3/10/1993	2/25/1997, 62 FR 8385.	
021-240 .....	Air Conveying Systems .....	3/10/1993	2/25/1997, 62 FR 8385.	
021-245 .....	Fugitive Emissions .....	3/10/1993	2/25/1997, 62 FR 8385.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Division 200—General Air Pollution Procedures and Definitions</b>				
200–0010 .....	Purpose and Application ....	4/16/2015	10/11/2017, 82 FR 47122.	
200–0020 .....	General Air Quality Definitions.	4/16/2015	10/11/2017, 82 FR 47122.	
200–0025 .....	Abbreviations and Acronyms.	4/16/2015	10/11/2017, 82 FR 47122.	
200–0030 .....	Exceptions .....	4/16/2015	10/11/2017, 82 FR 47122.	
200–0035 .....	Reference Materials .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 202—Ambient Air Quality Standards and PSD Increments</b>				
202–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
202–0020 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Ambient Air Quality Standards</b>				
202–0050 .....	Purpose and Scope of Ambient Air Quality Standards.	4/16/2015	10/11/2017, 82 FR 47122.	
202–0060 .....	Suspended Particulate Matter.	10/16/2015	5/24/2018, 83 FR 24034.	
202–0070 .....	Sulfur Dioxide .....	4/16/2015	10/11/2017, 82 FR 47122.	
202–0080 .....	Carbon Monoxide .....	7/1/2011	1/22/2003, 68 FR 2891.	
202–0090 .....	Ozone .....	7/13/2017	5/24/2018, 83 FR 24034.	
202–0100 .....	Nitrogen Dioxide .....	4/16/2015	10/11/2017, 82 FR 47122.	
202–0130 .....	Lead .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Prevention of Significant Deterioration Increments</b>				
202–0200 .....	General .....	4/16/2015	10/11/2017, 82 FR 47122.	
202–0210 .....	Ambient Air PSD Increments.	4/16/2015	10/11/2017, 82 FR 47122.	
202–0220 .....	Ambient Air Ceilings .....	4/16/2015	10/11/2017, 82 FR 47122.	
202–0225 .....	Ambient Air Quality Impact Levels for Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 204—Designation of Air Quality Areas</b>				
204–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
204–0020 .....	Designation of Air Quality Control Regions.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0030 .....	Designation of Nonattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0040 .....	Designation of Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0050 .....	Designation of Prevention of Significant Deterioration Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0060 .....	Redesignation of Prevention of Significant Deterioration Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0070 .....	Special Control Areas .....	4/16/2015	10/11/2017, 82 FR 47122.	
204–0080 .....	Motor Vehicle Inspection Boundary Designations.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0090 .....	Oxygenated Gasoline Control Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Designation of Areas</b>				
204–0300 .....	Designation of Sustainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0310 .....	Designation of Reattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0320 .....	Priority Sources .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 206—Air Pollution Emergencies</b>				
206–0010 .....	Introduction .....	4/16/2015	10/11/2017, 82 FR 47122.	
206–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	



TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
206–0030 .....	Episode State Criteria for Air Pollution Emergencies.	4/16/2015	10/11/2017, 82 FR 47122.	
206–0040 .....	Special Conditions .....	4/16/2015	10/11/2017, 82 FR 47122.	
206–0050 .....	Source Emission Reduction Plans.	4/16/2015	10/11/2017, 82 FR 47122.	
206–0060 .....	Regional Air Pollution Authorities.	4/16/2015	10/11/2017, 82 FR 47122.	
206–0070 .....	Operations Manual .....	4/16/2015	10/11/2017, 82 FR 47122.	
206–8010 .....	Air Pollution Episode ALERT Conditions Source Emission Reduction Plan Emissions Control Actions to be Taken as Appropriate in Alert Episode Area.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8020 .....	Air Pollution Episode WARNING Conditions Emission Reduction Plan.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8030 .....	Air Pollution Episode EMERGENCY Conditions Emission Reduction Plan.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8040 .....	Air Pollution Episode Conditions Due to Particulate Which is Primarily Fallout from Volcanic Activity or Windblown Dust.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 208—Visible Emissions and Nuisance Requirements</b>				
208–0005 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
208–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Visible Emissions</b>				
208–0110 .....	Visible Air Contaminant Limitations.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Fugitive Emission Requirements</b>				
208–0210 .....	Requirements for Fugitive Emissions.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 209—Public Participation</b>				
209–0010 .....	Purpose .....	4/16/2015	10/11/2017, 82 FR 47122.	
209–0020 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
209–0030 .....	Public Notice Categories and Timing.	4/16/2015	10/11/2017, 82 FR 47122.	
209–0040 .....	Public Notice Information ...	4/16/2015	10/11/2017, 82 FR 47122.	
209–0050 .....	Public Notice Procedures ..	4/16/2015	10/11/2017, 82 FR 47122.	
209–0060 .....	Persons Required to be Notified.	4/16/2015	10/11/2017, 82 FR 47122.	
209–0080 .....	Issuance or Denial of a Permit.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 210—Stationary Source Notification Requirements</b>				
210–0010 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
210–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Registration</b>				
210–0100 .....	Registration in General .....	4/16/2015	10/11/2017, 82 FR 47122.	
210–0110 .....	Registration Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
210–0120 .....	Re-Registration and Maintaining Registration.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Notice of Construction and Approval of Plans</b>				
210–0205 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
210–0215 .....	Requirement .....	4/16/2015	10/11/2017, 82 FR 47122.	
210–0225 .....	Types of Construction/ Modification Changes.	4/16/2015	10/11/2017, 82 FR 47122.	
210–0230 .....	Notice to Construct .....	4/16/2015	10/11/2017, 82 FR 47122.	
210–0240 .....	Construction Approval .....	4/16/2015	10/11/2017, 82 FR 47122.	
210–0250 .....	Approval to Operate .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 212—Stationary Source Testing and Monitoring</b>				
212–0005 .....	Applicability and Jurisdic- tion.	4/16/2015	10/11/2017, 82 FR 47122.	
212–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Sampling, Testing and Measurement</b>				
212–0110 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
212–0120 .....	Program .....	4/16/2015	10/11/2017, 82 FR 47122.	
212–0130 .....	Stack Heights and Disper- sion Techniques.	4/16/2015	10/11/2017, 82 FR 47122.	
212–0140 .....	Methods .....	4/16/2015	10/11/2017, 82 FR 47122.	
212–0150 .....	Department Testing .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 214—Stationary Source Reporting Requirements</b>				
214–0005 .....	Applicability and Jurisdic- tion.	4/16/2015	10/11/2017, 82 FR 47122.	
214–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Reporting</b>				
214–0100 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
214–0110 .....	Request for Information .....	4/16/2015	10/11/2017, 82 FR 47122.	
214–0114 .....	Records; Maintaining and Reporting.	4/16/2015	10/11/2017, 82 FR 47122.	
214–0120 .....	Enforcement .....	10/14/1999	1/22/2003, 68 FR 2891.	
214–0130 .....	Information Exempt from Disclosure.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Emissions Statements for VOC and NO<sub>x</sub> Sources</b>				
214–0200 .....	Purpose and Applicability ..	4/16/2015	10/11/2017, 82 FR 47122.	
214–0210 .....	Requirements .....	4/16/2015	10/11/2017, 82 FR 47122.	
214–0220 .....	Submission of Emission Statement.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Excess Emissions and Emergency Provision</b>				
214–0300 .....	Purpose and Applicability ..	11/8/2007	12/27/2011, 76 FR 80747.	
214–0310 .....	Planned Startup and Shut- down.	11/8/2007	12/27/2011, 76 FR 80747.	
214–0320 .....	Scheduled Maintenance ....	11/8/2007	12/27/2011, 76 FR 80747.	
214–0330 .....	All Other Excess Emissions	11/8/2007	12/27/2011, 76 FR 80747.	
214–0340 .....	Reporting Requirements ....	11/8/2007	12/27/2011, 76 FR 80747.	
214–0350 .....	Enforcement Action Criteria	11/8/2007	12/27/2011, 76 FR 80747.	
214–0360 .....	Emergency as an Affirma- tive Defense.	11/8/2007	12/27/2011, 76 FR 80747.	
<b>Division 216—Air Contaminant Discharge Permits</b>				
216–0010 .....	Purpose .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0020 .....	Applicability and Jurisdic- tion.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0025 .....	Types of Permits .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0030 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0040 .....	Application Requirements ..	4/16/2015	10/11/2017, 82 FR 47122.	
216–0052 .....	Construction ACDPs .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0054 .....	Short-Term Activity ACDPs	4/16/2015	10/11/2017, 82 FR 47122.	
216–0056 .....	Basic ACDPs .....	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
216–0060 .....	General Air Contaminant Discharge Permits.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0062 .....	General ACDP Attachments.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0064 .....	Simple ACDPs .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0066 .....	Standard ACDPs .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–0068 .....	Simple and Standard ACDP Attachments.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0070 .....	Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0082 .....	Termination or Revocation of an ACDP.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0084 .....	Department-Initiated Modification.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0090 .....	Sources Subject to ACDPs and Fees.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0094 .....	Temporary Closure .....	4/16/2015	10/11/2017, 82 FR 47122.	
216–8010 .....	Table 1—Activities and Sources.	4/16/2015	10/11/2017, 82 FR 47122.	
216–8020 .....	Table 2—Air Contaminant Discharge Permits.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 222—Stationary Source Plant Site Emission Limits</b>				
222–0010 .....	Policy .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0020 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
222–0030 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Criteria for Establishing Plant Site Emission Limits</b>				
222–0035 .....	General Requirements for Establishing All PSELs.	4/16/2015	10/11/2017, 82 FR 47122.	
222–0040 .....	Generic Annual PSEL .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0041 .....	Source Specific Annual PSEL.	4/16/2015	10/11/2017, 82 FR 47122.	
222–0042 .....	Short Term PSEL .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0046 .....	Netting Basis .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0048 .....	Baseline Period and Baseline Emission Rate.	4/16/2015	10/11/2017, 82 FR 47122.	
222–0051 .....	Actual Emissions .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0055 .....	Unassigned Emissions .....	4/16/2015	10/11/2017, 82 FR 47122.	
222–0080 .....	Plant Site Emission Limit Compliance.	4/16/2015	10/11/2017, 82 FR 47122.	
222–0090 .....	Combining and Splitting Sources and Changing Primary SIC Code.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 223—Regional Haze Rules</b>				
223–0010 .....	Purpose .....	12/10/2010	7/5/2011, 76 FR 38997.	
223–0020 .....	Definitions .....	12/10/2010	7/5/2011, 76 FR 38997.	
223–0030 .....	BART and Additional Regional Haze Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106).	12/10/2010	7/5/2011, 76 FR 38997.	
223–0040 .....	Federally Enforceable Permit Limits.	12/10/2010	7/5/2011, 76 FR 38997.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
223–0050 .....	Alternative Regional Haze Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106).	12/10/2010	7/5/2011, 76 FR 38997.	
223–0080 .....	Alternative Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106) Based Upon Permanently Ceasing the Burning of Coal Within Five Years of EPA Approval of the Revision to the Oregon Clean Air Act State Implementation Plan Incorporating OAR Chapter 340, Division 223.	12/10/2010	7/5/2011, 76 FR 38997.	
<b>Division 224—New Source Review</b>				
224–0010 .....	Applicability, General Prohibitions, General Requirements and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
224–0025 .....	Major Modification .....	4/16/2015	10/11/2017, 82 FR 47122.	
224–0030 .....	New Source Review Procedural Requirements.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0034 .....	Exemptions .....	4/16/2015	10/11/2017, 82 FR 47122.	
224–0038 .....	Fugitive and Secondary Emissions.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0040 .....	Review of Sources Subject to Major NSR or Type A State NSR for Compliance with Regulations.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Major New Source Review</b>				
224–0045 .....	Requirements for Sources in Sustainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0050 .....	Requirements for Sources in Nonattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0055 .....	Requirements for Sources in Reattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0060 .....	Requirements for Sources in Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0070 .....	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>State New Source Review</b>				
224–0245 .....	Requirements for Sources in Sustainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0250 .....	Requirements for Sources in Nonattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0255 .....	Requirements for Sources in Reattainment Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0260 .....	Requirements for Sources in Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
224–0270 .....	Requirements for Sources in Attainment and Un-classified Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
Net Air Quality Benefit Emission Offsets				
224–0500 .....	Net Air Quality Benefit for Sources Locating within or Impacting Designated Area.	4/16/2015	10/11/2017, 82 FR 47122	Except paragraph (3).
224–0510 .....	Common Offset Requirements.	4/16/2015	10/11/2017, 82 FR 47122 ..	
224–0520 .....	Requirements for Demonstrating Net Air Quality Benefit for Ozone Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0530 .....	Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0540 .....	Sources in a Designated Area Impacting Other Designated Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 225—Air Quality Analysis				
225–0010 .....	Purpose and Jurisdiction ...	4/16/2015	10/11/2017, 82 FR 47122.	
225–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
225–0030 .....	Procedural Requirements ..	4/16/2015	10/11/2017, 82 FR 47122.	
225–0040 .....	Air Quality Models .....	4/16/2015	10/11/2017, 82 FR 47122.	
225–0045 .....	Requirements for Analysis in Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
225–0050 .....	Requirements for Analysis in PSD Class I and Class III Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
225–0060 .....	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
225–0070 .....	Requirements for Demonstrating Compliance with Air Quality Related Values Protection.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 226—General Emission Standards				
226–0005 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
226–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
Highest and Best Practicable Treatment and Control				
226–0100 .....	Policy and Application .....	4/16/2015	10/11/2017, 82 FR 47122.	
226–0110 .....	Pollution Prevention .....	4/16/2015	10/11/2017, 82 FR 47122.	
226–0120 .....	Operating and Maintenance Requirements.	4/16/2015	10/11/2017, 82 FR 47122.	
226–0130 .....	Typically Achievable Control Technology (TACT).	4/16/2015	10/11/2017, 82 FR 47122.	
226–0140 .....	Additional Control Requirements for Stationary Sources of Air Contaminants.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Grain Loading Standards</b>				
226–0210 .....	Particulate Emission Limitations for Sources Other Than Fuel Burning Equipment, Refuse Burning Equipment and Fugitive Emissions.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Particulate Emissions from Process Equipment</b>				
226–0310 .....	Emission Standard .....	4/16/2015	10/11/2017, 82 FR 47122.	
226–0320 .....	Determination of Process Weight.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Alternative Emission Controls</b>				
226–0400 .....	Alternative Emission Controls (Bubble).	4/16/2015	10/11/2017, 82 FR 47122.	
226–0810 .....	Particulate Matter Emissions Standards for Process Equipment.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content</b>				
228–0010 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
228–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Sulfur Content of Fuels</b>				
228–0100 .....	Residual Fuel Oils .....	4/16/2015	10/11/2017, 82 FR 47122.	
228–0110 .....	Distillate Fuel Oils .....	4/16/2015	10/11/2017, 82 FR 47122.	
228–0120 .....	Coal .....	4/16/2015	10/11/2017, 82 FR 47122.	
228–0130 .....	Exemptions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>General Emission Standards for Fuel Burning Equipment</b>				
228–0200 .....	Sulfur Dioxide Standards ...	4/16/2015	10/11/2017, 82 FR 47122.	
228–0210 .....	Grain Loading Standards ...	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 232—Emission Standards for VOC Point Sources</b>				
232–0010 .....	Introduction .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0020 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0030 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0040 .....	General Non-Categorical Requirements.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0050 .....	Exemptions .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0060 .....	Compliance Determination	4/16/2015	10/11/2017, 82 FR 47122.	
232–0080 .....	Bulk Gasoline Plants Including Transfer of Gasoline.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0085 .....	Gasoline Delivery Vessel(s)	4/16/2015	10/11/2017, 82 FR 47122.	
232–0090 .....	Bulk Gasoline Terminals Including Truck and Trailer Loading.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0100 .....	Testing Vapor Transfer and Collection Systems.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0110 .....	Loading Gasoline and Volatile Organic Liquids onto Marine Tank Vessels.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0120 .....	Cutback and Emulsified Asphalt.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0130 .....	Petroleum Refineries .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0140 .....	Petroleum Refinery Leaks	4/16/2015	10/11/2017, 82 FR 47122.	
232–0150 .....	VOC Liquid Storage .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0160 .....	Surface Coating in Manufacturing.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0170 .....	Aerospace Component Coating Operations.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
232–0180 .....	Degreasers .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0190 .....	Open Top Vapor Degreasers.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0200 .....	Conveyorized Degreasers	4/16/2015	10/11/2017, 82 FR 47122.	
232–0210 .....	Asphaltic and Coal Tar Pitch Used for Roofing Coating.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0220 .....	Flat Wood Coating .....	4/16/2015	10/11/2017, 82 FR 47122.	
232–0230 .....	Rotogravure and Flexographic Printing.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 234—Emission Standards for Wood Product Industries</b>				
234–0005 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122 ..	Except (8) and (10).
<b>Wigwam Waste Burners</b>				
234–0100 .....	Wigwam Waste Burners ....	4/16/2015	10/11/2017, 82 FR 47122.	
234–0140 .....	Existing Administrative Agency Orders.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Kraft Pulp Mills</b>				
234–0200 .....	Statement of Policy and Applicability.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0210 .....	Emission Limitations .....	4/16/2015	10/11/2017, 82 FR 47122 ..	Except (1).
234–0220 .....	More Restrictive Emission Limits.	4/16/2015	10/11/2017, 82 FR 47122 ..	Except (2).
234–0240 .....	Monitoring .....	4/16/2015	10/11/2017, 82 FR 47122 ..	Except (1).
234–0250 .....	Reporting .....	4/16/2015	10/11/2017, 82 FR 47122 ..	Except (1) and (2).
234–0270 .....	Chronic Upset Conditions ..	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Board Products Industries (Veneer, Plywood, Particleboard, Hardboard)</b>				
234–0500 .....	Applicability and General Provisions.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0510 .....	Veneer and Plywood Manufacturing Operations.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0520 .....	Particleboard Manufacturing Operations.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0530 .....	Hardboard Manufacturing Operations.	4/16/2015	10/11/2017, 82 FR 47122.	
234–0540 .....	Testing and Monitoring .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 236—Emission Standards for Specific Industries</b>				
236–0005 .....	Applicability and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
236–0010 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Hot Mix Asphalt Plants</b>				
236–0400 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
236–0410 .....	Control Facilities Required	4/16/2015	10/11/2017, 82 FR 47122.	
236–0420 .....	Other Established Air Quality Limitations.	4/16/2015	10/11/2017, 82 FR 47122.	
236–0440 .....	Ancillary Sources of Emission—Housekeeping of Plant Facilities.	4/16/2015	10/11/2017, 82 FR 47122.	
236–8010 .....	Process Weight Table .....	4/16/2015	10/11/2017, 82 FR 47122	
<b>Division 240—Rules for Areas with Unique Air Quality Needs</b>				
240–0010 .....	Purpose .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0020 .....	Emission Limitations .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0030 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0050 .....	Compliance Testing Requirements.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>The Medford-Ashland Air Quality Maintenance Area and the Grants Pass Urban Growth Area</b>				
240–0100 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0110 .....	Wood Waste Boilers .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0120 .....	Veneer Dryer Emission Limitations.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0130 .....	Air Conveying Systems (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0140 .....	Wood Particle Dryers at Particleboard Plants.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0150 .....	Hardboard Manufacturing Plants.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0160 .....	Wigwam Waste Burners ....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0180 .....	Control of Fugitive Emissions (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0190 .....	Requirement for Operation and Maintenance Plans (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0210 .....	Continuous Monitoring .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0220 .....	Source Testing .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0250 .....	Open Burning .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>La Grande Urban Growth Area</b>				
240–0300 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0320 .....	Wood-Waste Boilers .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0330 .....	Wood Particle Dryers at Particleboard Plants.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0340 .....	Hardboard Manufacturing Plants.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0350 .....	Air Conveying Systems ....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0360 .....	Fugitive Emissions .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>The Lakeview Urban Growth Area</b>				
240–0400 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0410 .....	Control of Fugitive Emissions.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0420 .....	Requirement for Operation and Maintenance Plans.	4/16/2015	10/11/2017, 82 FR 47122.	
240–0430 .....	Source Testing .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0440 .....	Open Burning .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Klamath Falls Nonattainment Area</b>				
240–0500 .....	Applicability .....	12/11/2012	8/25/2015, 80 FR 51470.	
240–0510 .....	Opacity Standard .....	4/16/2015	10/11/2017, 82 FR 47122.	
240–0520 .....	Control of Fugitive Emissions.	12/11/2012	8/25/2015, 80 FR 51470.	
240–0530 .....	Requirement for Operation and Maintenance Plans.	12/11/2012	8/25/2015, 80 FR 51470.	
240–0540 .....	Compliance Schedule for Existing Industrial Sources.	12/11/2012	8/25/2015, 80 FR 51470.	
240–0550 .....	Requirements for New Sources When Using Residential Wood Fuel-Fired Device Offsets.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Real and Permanent PM<sub>2.5</sub> and PM<sub>10</sub> Offsets</b>				
240–0560 .....	Real and Permanent PM <sub>2.5</sub> and PM <sub>10</sub> Offsets.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Klamath Falls Nonattainment Area Contingency Measures</b>				
240–0570 .....	Applicability .....	12/11/2012	6/6/2016, 81 FR 36176.	
240–0580 .....	Existing Industrial Sources Control Efficiency.	12/11/2012	6/6/2016, 81 FR 36176.	



TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
240-0610 .....	Continuous Monitoring for Industrial Sources.	4/16/2015	10/11/2017, 82 FR 47122.	
240-0620 .....	Contingency Measures: New Industrial Sources.	12/11/2012	6/6/2016, 81 FR 36176.	
240-0630 .....	Contingency Enhanced Curtailment of Use of Solid Fuel Burning Devices and Fireplaces.	12/11/2012	6/6/2016, 81 FR 36176.	
<b>Division 242—Rules Applicable to the Portland Area</b>				
242-0010 .....	What is the Employee Commute Options Program?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0020 .....	Who is Subject to ECO? ...	4/12/2007	12/19/2011, 76 FR 78571.	
242-0030 .....	What Does ECO Require?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0040 .....	How Does the Department Enforce ECO?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0050 .....	Definitions of Terms Used in These Rules.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0060 .....	Should All Employees at a Work Site be Counted?.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0070 .....	What are the Major Requirements of ECO?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0080 .....	What are the Registration Requirements?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0090 .....	What are the Requirements for an Employee Survey?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0100 .....	Special Requirements for Employers Intending to Comply Without an Approved Plan.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0110 .....	What if an Employer Does Not Meet the Target Auto Trip Rate?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0120 .....	How Will Employers Demonstrate Progress Toward the Target Auto Trip Rate?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0130 .....	What is the Schedule Employers Must Follow to Implement ECO?.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0140 .....	How Should Employers Account for Changes in Work Force Size?.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0150 .....	How Can an Employer Reduce Auto Commute Trips to a Work Site?.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0160 .....	What Should be Included in an Auto Trip Reduction Plan?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0170 .....	When Will the Department Act on a Submitted Auto Trip Reduction Plan?.	10/14/1999	1/22/2003, 68 FR 2891.	
242-0180 .....	What is a Good Faith Effort?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0190 .....	How Does the ECO Program Affect New Employers, Expanding Employers and Employers Relocating Within the Portland AQMA?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0200 .....	Can a New or Relocating Employer Comply with ECO Through Restricted Parking Ratios?.	4/12/2007	12/19/2011, 76 FR 78571.	
242-0210 .....	Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?.	4/12/2007	12/19/2011, 76 FR 78571.	

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State citation	Title/subject	State effective date	EPA approval date	Explanations
242–0220 .....	What if an Employer Has More Than One Work Site Within the Portland AQMA?.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0230 .....	Can Employers Submit a Joint Plan?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0240 .....	Are There Alternatives to Trip Reduction?.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0250 .....	What Alternatives Qualify as Equivalent Emission Reductions?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0260 .....	Can Employers Get Credit for Existing Trip Reduction Programs?.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0270 .....	Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0280 .....	Participation in the Industrial Emission Management Program.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0290 .....	What Kind of Records Must be Kept and for How Long?.	4/12/2007	12/19/2011, 76 FR 78571.	
<b>Voluntary Maximum Parking Ratio Program</b>				
242–0300 .....	What is the Voluntary Parking Ratio Program?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0310 .....	Who can Participate in the Voluntary Parking Ratio Program?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0320 .....	Definitions of Terms and Land Uses.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0330 .....	How Does a Property Owner Comply with the Voluntary Parking Ratio Program?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0340 .....	What are the Incentives for Complying with the Voluntary Parking Ratio Program?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0350 .....	Why Do I Need a Parking Ratio Permit?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0360 .....	What is Required to Obtain a Parking Ratio Permit?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0370 .....	How is the Parking Ratio Program Enforced?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0380 .....	When Will the Department Act on a Submitted Permit Application?.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0390 .....	What are the Applicable Parking Ratios?.	10/14/1999	1/22/2003, 68 FR 2891.	
<b>Industrial Emission Management Program</b>				
242–0400 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
242–0410 .....	Definition of Terms .....	4/16/2015	10/11/2017, 82 FR 47122.	
242–0420 .....	Unused PSEL Donation Program.	4/16/2015	10/11/2017, 82 FR 47122.	
242–0430 .....	Industrial Growth Allowances.	4/16/2015	10/11/2017, 82 FR 47122.	
242–0440 .....	Industrial Growth Allowance Allocation.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Gasoline Vapors from Gasoline Transfer and Dispensing Operations</b>				
242–0500 .....	Purpose and Applicability ..	4/16/2015	10/27/2015, 80 FR 65655.	
242–0510 .....	Definitions .....	4/16/2015	10/27/2015, 80 FR 65655.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
242–0520 .....	General Provisions .....	4/16/2015	10/27/2015, 80 FR 65655.	
<b>Motor Vehicle Refinishing</b>				
242–0600 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
242–0610 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
242–0620 .....	Requirements for Motor Vehicle Refinishing in Portland AQMA.	4/16/2015	10/11/2017, 82 FR 47122.	
242–0630 .....	Inspecting and Testing Requirements.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 244—Oregon Federal Hazardous Air Pollutant Program</b> <sup>2,3</sup>				
<b>General Provisions for Stationary Sources</b>				
244–0030 .....	Definitions .....	4/16/2015	10/27/2015, 80 FR 65655 ..	Only to the extent needed to implement the requirements for gasoline dispensing facilities in division 244 that are approved into the SIP.
<b>Emission Standards for Gasoline Dispensing Facilities</b>				
244–0232 .....	Purpose .....	4/16/2015	10/27/2015, 80 FR 65655.	
244–0234 .....	Affected Sources .....	4/16/2015	10/27/2015, 80 FR 65655.	
244–0236 .....	Affected Equipment or Processes.	4/16/2015	10/27/2015, 80 FR 65655.	
244–0238 .....	Compliance Dates .....	4/16/2015	10/27/2015, 80 FR 65655 ..	Except (1)(a) and (2)(c).
<b>Emission Limitations and Management Practices</b>				
244–0239 .....	General Duties to Minimize Emissions.	4/16/2015	10/27/2015, 80 FR 65655.	
244–0240 .....	Work Practice and Submerged Fill Requirements.	4/16/2015	10/27/2015, 80 FR 65655 ..	Except (1)(b) and (c).
244–0242 .....	Vapor Balance Requirements.	4/16/2015	10/27/2015, 80 FR 65655 ..	Including tables 2 and 3. Except (4)(c) and (d).
<b>Testing and Monitoring Requirements</b>				
244–0244 .....	Testing and Monitoring Requirements.	4/16/2015	10/27/2015, 80 FR 65655.	
<b>Notifications, Records, and Reports</b>				
244–0246 .....	Notifications .....	4/16/2015	10/27/2015, 80 FR 65655.	
244–0248 .....	Recordkeeping Requirements.	4/16/2015	10/27/2015, 80 FR 65655.	
244–0250 .....	Reporting Requirements ....	4/16/2015	10/27/2015, 80 FR 65655.	
244–0252 .....	General Provision Applicability.	12/31/2008	10/27/2015, 80 FR 65655.	
<b>Division 250—General Conformity</b>				
250–0010 .....	Purpose .....	10/14/1999	1/22/2003, 68 FR 2891.	
250–0020 .....	Applicability .....	10/14/1999	1/22/2003, 68 FR 2891.	
250–0030 .....	Definitions .....	10/16/2015	5/24/2018, 83 FR 24034.	
250–0040 .....	Conformity Analysis .....	10/14/1999	1/22/2003, 68 FR 2891.	
250–0050 .....	Reporting Requirements ....	10/14/1999	1/22/2003, 68 FR 2891.	
250–0060 .....	Public Participation .....	10/14/1999	1/22/2003, 68 FR 2891.	
250–0070 .....	Frequency of Conformity Determinations.	10/14/1999	1/22/2003, 68 FR 2891.	
250–0080 .....	Criteria for Determining Conformity of General Federal Actions.	10/14/1999	1/22/2003, 68 FR 2891.	
250–0090 .....	Procedures for Conformity Determinations of General Federal Actions.	10/14/1999	1/22/2003, 68 FR 2891.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
250–0100 .....	Mitigation of Air Quality Im- pacts.	10/14/1999	1/22/2003, 68 FR 2891.	
Division 252—Transportation Conformity				
252–0010 .....	Propose .....	10/14/1999	1/22/2003, 68 FR 2891.	Except last two sentences.
252–0030 .....	Definitions .....	3/5/2010	10/4/2012, 77 FR 60627.	
252–0060 .....	Consultation .....	3/5/2010	10/4/2012, 77 FR 60627.	
252–0070 .....	Timeframe of Conformity Determinations.	3/5/2010	10/4/2012, 77 FR 60627 ....	
252–0230 .....	Written Comments .....	3/5/2010	10/4/2012, 77 FR 60627.	
Division 256—Motor Vehicles				
256–0010 .....	Definitions .....	7/12/2005	12/19/2011, 76 FR 78571.	
Visible Emissions				
256–0100 .....	Visible Emissions—General Requirements, Exclu- sions.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0130 .....	Motor Vehicle Fleet Oper- ation.	7/12/2005	12/19/2011, 76 FR 78571.	
Certification of Pollution Control Systems				
256–0200 .....	County Designations .....	10/14/1999	11/22/2004, 69 FR 67819.	
Emission Control System Inspection				
256–0300 .....	Scope .....	7/12/2005	12/19/2011, 76 FR 78571.	
256–0310 .....	Government-Owned Vehi- cle, Permanent Fleet Ve- hicle and United States Government Vehicle Testing.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0330 .....	Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program.	10/14/1999	11/24/2004, 69 FR 67819.	
256–0340 .....	Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0350 .....	Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0355 .....	Emissions Control Test Method for OBD Test Program.	10/25/2000	11/22/2004, 69 FR 67819.	
256–0356 .....	Emissions Control Test Method for On-Site Vehi- cle Testing for Auto- mobile Dealerships.	10/4/2001	11/22/2004, 69 FR 67819.	
256–0370 .....	Renewal of Registration for Light Duty Motor Vehi- cles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0380 .....	Light Duty Motor Vehicle Emission Control Test Criteria for Basic Pro- gram.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0390 .....	Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria.	7/12/2005	12/19/2011, 76 FR 78571.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
256–0400 .....	Light Duty Motor Vehicle Emission Control Standards for Basic Program.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0410 .....	Light Duty Motor Vehicle Emission Control Standards for Basic Program.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0420 .....	Heavy-Duty Gasoline Motor Vehicle Emission Control Standards.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0440 .....	Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates.	10/25/2000	11/22/2004, 69 FR 67819.	
256–0450 .....	Gas Analytical System Licensing Criteria for Basic Program.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0460 .....	Gas Analytical System Licensing Criteria for Enhanced Program.	10/14/1999	11/22/2004, 69 FR 67819.	
256–0465 .....	Test Equipment Licensing Criteria for OBD Test Program.	10/25/2000	11/22/2004, 69 FR 67819.	
256–0470 .....	Agreement with Independent Contractor; Qualifications of Contractor; Agreement Provisions.	10/14/1999	11/22/2004; 69 FR 67819.	
<b>Division 258—Motor Vehicle Fuel Specifications</b>				
258–0010 .....	Definitions .....	10/14/1999	1/22/2003, 68 FR 2891.	
<b>Oxygenated Gasoline</b>				
258–0100 .....	Policy .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0110 .....	Purpose and General Requirements.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0120 .....	Sampling and Testing for Oxygen Content.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0130 .....	Compliance Options .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0140 .....	Per Gallon Oxygen Content Standard.	10/14/1999	1/22/2003, 69 FR 2891.	
258–0150 .....	Average Oxygen Content Standard.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0160 .....	Minimum Oxygen Content	10/14/1999	1/22/2003, 68 FR 2891.	
258–0170 .....	Oxygenated Gasoline Blending.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0180 .....	Registration .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0190 .....	CAR, Distributor and Retail Outlet Operating Permits.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0200 .....	Owners of Gasoline and Terminals, Distributors and Retail Outlets Required to Have Indirect Source Operating Permits.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0210 .....	Recordkeeping .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0220 .....	Reporting .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0230 .....	Prohibited Activities .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0240 .....	Inspection and Sampling ...	10/14/1999	1/22/2003, 68 FR 2891.	
258–0250 .....	Liability for Violation of a Prohibited Activity.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0260 .....	Defenses for Prohibited Activities.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0270 .....	Inability to Produce Conforming Gasoline Due to Extraordinary Circumstances.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0280 .....	Quality Assurance Program	10/14/1999	1/22/2003, 68 FR 2891.	

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State citation	Title/subject	State effective date	EPA approval date	Explanations
258–0290 .....	Attest Engagements Guide- lines When Prohibited Activities Alleged.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0300 .....	Dispenser Labeling .....	10/14/1999	1/22/2003, 68 FR 2891.	
258–0310 .....	Contingency Provision for Carbon Monoxide Non- attainment Areas.	10/14/1999	1/22/2003, 68 FR 2891.	
<b>Standard for Automotive Gasoline</b>				
258–0400 .....	Reid Vapor Pressure for Gasoline.	10/14/1999	1/22/2003, 68 FR 2891.	
<b>Division 262—Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices</b>				
262–0400 .....	Purpose and Applicability of Rules.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0450 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
262–0500 .....	Certification of Solid Fuel Burning Devices for Sale and New.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0600 .....	New and Used Solid Fuel Burning Devices.	5/17/2012	6/20/2013, 78 FR 37124.	
262–0700 .....	Removal and Destruction of Used Solid Fuel Burn- ing Devices.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0800 .....	Wood Burning and Other Heating Devices Curtail- ment Program.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0900 .....	Materials Prohibited from Burning.	3/15/2011	6/20/2013, 78 FR 37124.	
262–1000 .....	Wood Burning Contingency Measures for PM <sub>2.5</sub> Non- attainment Areas.	12/11/2012	6/6/2016, 81 FR 36176.	
<b>Division 264—Rules for Open Burning</b>				
264–0010 .....	How to Use These Open Burning Rules.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0020 .....	Policy .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0030 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0040 .....	Exemptions, Statewide .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0050 .....	General Requirements Statewide.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0060 .....	General Prohibitions State- wide.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0070 .....	Open Burning Conditions ..	4/16/2015	10/11/2017, 82 FR 47122.	
264–0075 .....	Delegation of Authority .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0078 .....	Open Burning Control Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0080 .....	County Listing of Specific Open Burning Rules.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Open Burning Requirements</b>				
264–0100 .....	Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sher- man, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0110 .....	Benton, Linn, Marion, Polk, and Yamhill Counties.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0120 .....	Clackamas County .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0130 .....	Multnomah County .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0140 .....	Washington County .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0150 .....	Columbia County .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0160 .....	Lane County .....	4/16/2015	10/11/2017, 82 FR 47122.	

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State citation	Title/subject	State effective date	EPA approval date	Explanations
264–0170 .....	Coos, Douglas, Jackson and Josephine Counties.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0175 .....	Klamath County .....	4/16/2015	10/11/2017, 82 FR 47122.	
264–0180 .....	Letter Permits .....	4/16/2015	10/11/2017, 82 FR 47122	
<b>Division 266—Field Burning Rules (Willamette Valley)</b>				
266–0010 .....	Introduction .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0020 .....	Policy .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0030 .....	Definitions .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0040 .....	General Requirements .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0050 .....	Registration, Permits, Fees, Records.	10/14/1999	1/22/2003, 68 FR 2891.	
266–0060 .....	Acreage Limitations, Allocations.	10/14/1999	1/22/2003, 68 FR 2891.	
266–0070 .....	Daily Burning Authorization Criteria.	10/14/1999	1/22/2003, 68 FR 2891.	
266–0080 .....	Burning by Public Agencies (Training Fires).	10/14/1999	1/22/2003, 68 FR 2891.	
266–0090 .....	Preparatory Burning .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0100 .....	Experimental Burning .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0110 .....	Emergency Burning Cessation.	10/14/1999	1/22/2003, 68 FR 2891.	
266–0120 .....	Propane Flaming .....	10/14/1999	1/22/2003, 68 FR 2891.	
266–0130 .....	Stack Burning .....	10/14/1999	1/22/2003, 68 FR 2891.	
<b>Division 268—Emission Reduction Credits</b>				
268–0010 .....	Applicability .....	4/16/2015	10/11/2017, 82 FR 47122.	
268–0020 .....	Definitions .....	4/16/2015	10/11/2017, 82 FR 47122.	
268–0030 .....	Emission Reduction Credits	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Oregon Department of Forestry—Chapter 629</b>				
629–24–301 .....	Maintenance of Productivity and Related Values.	8/1/1987	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
629–43–043 .....	Smoke Management Plan	4/13/1987	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
<b>Department of Oregon State Police Office of State Fire Marshall—Chapter 837 Division 110—Field Burning and Propaning Rules</b>				
837–110–0010 .....	Field Preparation .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0020 .....	Firefighting Water Supplies	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0030 .....	Firefighting Equipment .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0040 .....	Ignition Criteria .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0050 .....	Prohibited Use .....	2/7/1989	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0060 .....	Communication .....	2/7/1989	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0070 .....	Fire Safety Watch .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0080 .....	Fire Safety Buffer Zones ...	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0090 .....	Ban on Burning .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
<b>Propaning</b>				
837–110–0110 .....	Field Preparation .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0120 .....	Firefighting Water Supplies	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0130 .....	Firefighting Equipment .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0140 .....	Communication .....	2/7/1989	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0150 .....	Fire Safety Watch .....	2/7/1994	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.
837–110–0160 .....	Ban on Burning .....	8/11/1993	11/1/2001, 66 FR 55105 ....	Statewide Visibility Plan.

<sup>1</sup> EPA's approval is limited to the extent the provisions relate to section 110 of the Clean Air Act and determining compliance with and for purposes of implementation of SIP-approved requirements.

<sup>2</sup> Only for the Portland-Vancouver, Medford-Ashland, and Salem-Keizer Area Transportation Study air quality management areas, as well as all of Clackamas, Multnomah, and Washington counties.

<sup>3</sup> This approval is for the purpose of regulating volatile organic compound (VOC) emissions.

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
City of Grants Pass Ordinance No. 4671.	Bans Open Burning .....	7/23/1990 (city approved).	12/17/1993, 58 FR 65934.	Grants Pass PM–10 Attainment Plan.
City of Eugene Ordinance No. 19731.	An Ordinance Restricting the Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	11/5/1990 (city approved).	8/24/1994, 59 FR 43483	Eugene-Springfield PM–10 Attainment Plan.
Lane County Ordinance No. 9–90 (Alternative 2).	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	12/19/1990 (county enacted).	8/24/1994, 59 FR 43483	Eugene-Springfield PM–10 Attainment Plan.
City of Springfield Ordinance No. 5546.	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	12/17/1990 (city approved).	8/24/1994, 59 FR 43483	Eugene-Springfield PM–10 Attainment Plan.
Union County Ordinance 1991–6.	Field Burning Smoke Management Program.	6/5/1991 (county passed).	2/15/1995, 60 FR 8563 ..	La Grande PM–10 Attainment Plan.
City of Klamath Falls Ordinance 6630.	An Ordinance Consenting to the Application of the Klamath County Air Quality Program Ordinance Within City Limits.	9/16/1991 (city approval)	4/14/1997, 62 FR 18047	Klamath Falls PM–10 Attainment Plan.
City of Oakridge Ordinance 815.	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	8/15/96 (city approved) ..	3/15/1999, 64 FR 12751	Oakridge PM–10 Attainment Plan.
Town of Lakeview Resolution No. 402.	Establishes a Lakeview Air Quality Improvement Program.	2/28/1994 (town passed)	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Lake County Commissioners Resolution.	Establishment of a Lakeview Urban Growth Boundary Air Quality Improvement Program.	3/15/1995 (county passed).	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Town of Lakeview Ordinance No. 748.	Prohibits Use of Solid Fuel Burning Devices, Provides Certain Exemptions and Establishes Enforcement Controls.	2/28/1995 (town adopted).	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Town of Lakeview Ordinance No. 749.	Prohibits Waste Burning; Restricts Open Burning, Repeals Ordinance No. 581.	2/28/1995 (town adopted).	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Lake County Ordinance No. 29.	Prohibits Use of Solid Fuel Burning Devices, Provides Certain Exemptions and Establishes Enforcement Controls.	3/15/1995 (county adopted).	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Lake County Ordinance No. 30.	Prohibits Waste Burning and Restricts Open Burning.	3/15/1995 (county adopted).	9/21/1999, 64 FR 51051	Lakeview PM–10 Attainment Plan.
Medford Ordinance No. 6484.	Woodstove Curtailment .....	11/03/1989 (city approved).	7/24/2002, 67 FR 48388	Medford Carbon Monoxide (CO) Maintenance Plan.
Union County Ordinance No. 1992–4.	Management and Control of Field Burning.	7/1/1992 (county effective).	11/01/2001, 66 FR 55105.	Statewide Visibility Plan.
Jefferson County Ordinance No. 0–58–89.	Management and Control of Field Burning.	5/31/1989 (county passed).	11/01/2001, 66 FR 55105.	Statewide Visibility Plan.
Codified Ordinances of Jackson County 1810.01.	Definitions .....	5/2/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.02.	Exceptions to chapter .....	8/22/2001 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.03.	Requirements for solid fuel heating device installation.	12/20/1989 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.04.	Solid fuel burning device omission standard.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.05.	Restriction of woodburning and emissions on high pollution days.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.06.	Trackout .....	12/04/1985 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.07.	Open burning .....	8/22/2001 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.08.	Burning of material emitting dense smoke or noxious odors in solid fuel burning devices.	12/20/1989 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.



TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES—Continued

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
Codified Ordinances of Jackson County Exhibit A.	[Map 1] .....	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit B.	Proposed Curtailment Boundary Jackson County.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit C.	[Map 2] .....	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit D.	Boundary Description Medford-Ashland Air Quality Maintenance Area.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 5.550.	Outside Burning .....	3/16/2000 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 7.220.	Definitions .....	9/17/1998 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 7.222.	Operation of Solid Fuel Burning Device Prohibition.	9/17/1998 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 7.224.	Exemptions .....	9/17/1998 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 7.240.	Installation of Solid-Fuel Heating Devices.	8/02/1990 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Code of the City of Medford, Oregon: 7.242.	Prohibited Materials .....	9/17/1998 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.010.	Definitions .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.012.	Requirements for solid fuel burning device installation.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.014.	Solid fuel burning device emission standard.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.020.	Operation of solid fuel device prohibition.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.030.	Exemptions .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.01.032.	Prohibited materials .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.04.040 H.	Penalty and abatement .....	1979 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Central Point Municipal Code: 8.04.095.	Trackout prohibited .....	1994 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 10.30.005.	Definitions .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 10.30.010.	Outdoor and Indoor Burning Restricted.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 10.30.020.	Period When Outdoor Burning is Authorized.	2000 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 10.30.030.	Requirements for Permitted Fires	1993 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 10.30.040.	Permits Required .....	1993 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 9.24.010.	Definitions .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 9.24.020.	Requirements for Solid Fuel Heating Device Installation.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 9.24.030.	Solid Fuel Burning Device Emission Standard.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 9.24.040.	Restriction of Woodburning an Emissions on High Pollution Days.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Ashland Municipal Code: 9.24.050.	Prohibited Materials .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Talent Ordinance #565.	An ordinance of the city of Talent adopting a uniform fire code.	8/20/1992 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Talent Ordinance #98–635–0.	An ordinance regulating the use of solid fuel burning devices within the city of Talent, Oregon.	3/04/1998 (city approved).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.16.050.	Burn days .....	1982 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.16.090.	Prohibited materials .....	1982 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES—Continued

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
City of Phoenix Code: 8.20.010.	Definitions .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.20.020.	Requirements for solid fuel heating device installation.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.20.030.	Solid fuel burning device emission standard.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.20.040.	Restriction of woodburning and emissions on high pollution days.	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Phoenix Code: 8.20.050.	Prohibited materials .....	1998 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Jacksonville Code: Ordinance 375.	An ordinance amending chapter 8.08.100 of the Jacksonville Municipal Code.	4/21/1992 (city effective)	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Jacksonville Code Chapter 8.10.	Woodheating .....	February 1992 (city effective).	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Eagle Point Code: 8.08.160.	Outside burning of refuse or rubbish.	2000 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Eagle Point Code: 8.08.170.	Open burning restricted .....	1990 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Eagle Point Code: 8.08.180.	Purposes for open burning permit	1990 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Eagle Point Code: 8.08.190.	Times when open burning fire allowed.	1990 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
City of Eagle Point Code: 8.08.200.	Public nuisance .....	1990 (city effective) .....	6/19/2006, 71 FR 35163	Medford-Ashland PM–10 Attainment Plan.
Klamath County Ordinance 63.06.	Chapter 406—Klamath County Clean Air Ordinance 63.06.	12/31/2012 (county effective).	08/25/2015, 80 FR 51470.	Except 406.300 and 406.400 Klamath Falls PM <sub>2.5</sub> Attainment Plan.
City of Oakridge Ordinance No. 920.	An Ordinance Amending Section 7 of Ordinance 914 and Adopting New Standards for the Oakridge Air Pollution Control Program.	10/20/2016 (county approved).	2/08/2018, 83 FR 5537 ..	Oakridge PM–2.5 Attainment Plan. Only with respect to Sections 1, 2(1), 2(2), 3, 4, 5 and 7.

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON<sup>1</sup>

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Title 11—Policy and General Provisions</b>				
11–005 .....	Policy .....	10/9/1979	9/9/1993, 58 FR 47385.	
11–010 .....	Construction and Validity ...	10/9/1979	9/9/1993, 58 FR 47385.	
<b>Title 12—Definitions</b>				
12–001 .....	General .....	3/23/2018	10/5/2018, 83 FR 50274.	
12–005 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
12–010 .....	Abbreviations and Acronyms.	3/23/2018	10/5/2018, 83 FR 50274.	
12–020 .....	Exceptions .....	3/23/2018	10/5/2018, 83 FR 50274.	
12–025 .....	Reference Materials .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 16—Home Wood Heating Curtailment Program Enforcement</b>				
16–001 .....	Purpose .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–010 .....	Definitions .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–100 .....	Civil Penalty Schedule .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–110 .....	Classification of Violations	7/13/1993	8/24/1994, 59 FR 43483.	
16–120 .....	Notice of Violation .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–130 .....	Appeal of Civil Penalty .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–140 .....	Conducting Contested Case Evidentiary Hearings.	7/13/1993	8/24/1994, 59 FR 43483.	
16–150 .....	Evidentiary Rules .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–160 .....	Final Orders .....	7/13/1993	8/24/1994, 59 FR 43483.	
16–170 .....	Default Orders .....	7/13/1993	8/24/1994, 59 FR 43483.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON<sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Title 29—Designation of Air Quality Areas</b>				
29-0010 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
29-0020 .....	Designation of Air Quality Control Regions.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0030 .....	Designation of Nonattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0040 .....	Designation of Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0050 .....	Designation of Prevention of Significant Deterioration Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0060 .....	Redesignation of Prevention of Significant Deterioration Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0070 .....	Special Control Areas .....	3/31/2014	10/5/2018, 83 FR 50274.	
29-0080 .....	Motor Vehicle Inspection Boundary Designations.	3/31/2014	10/5/2018, 83 FR 50274.	
29-0090 .....	Oxygenated Gasoline Control Areas.	3/31/2014	10/5/2018, 83 FR 50274.	
<b>Designation of Areas</b>				
29-0300 .....	Designation of Sustainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0310 .....	Designation of Reattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
29-0320 .....	Priority Sources .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 30—Incinerator Regulations</b>				
30-010 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
30-015 .....	Best Available Control Technology for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-020 .....	Emission Limitations for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (2) and (8).
30-025 .....	Design and Operation for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (9).
30-030 .....	Continuous Emission Monitoring for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (1)(I) and (2)(E).
30-035 .....	Reporting and Testing for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-040 .....	Compliance for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-045 .....	Emission Limitations of Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (3).
30-050 .....	Design and Operation of Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-055 .....	Monitoring and Reporting for Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-060 .....	Compliance of Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
<b>Title 31—Public Participation</b>				
31-0010 .....	Purpose .....	3/23/2018	10/5/2018, 83 FR 50274.	
31-0020 .....	Applicability .....	3/23/2018	10/5/2018, 83 FR 50274.	
31-0030 .....	Public Notice Categories and Timing.	3/23/2018	10/5/2018, 83 FR 50274.	
31-0040 .....	Public Notice Information ...	3/23/2018	10/5/2018, 83 FR 50274.	
31-0050 .....	Public Notice Procedures ..	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
31-0060 .....	Persons Required to be Notified.	3/23/2018	10/5/2018, 83 FR 50274.	
31-0080 .....	Issuance or Denial of Permit.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 32—Emission Standards</b>				
32-001 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
32-005 .....	Highest and Best Practicable Treatment and Control Required.	3/23/2018	10/5/2018, 83 FR 50274.	
32-006 .....	Pollution Prevention .....	3/23/2018	10/5/2018, 83 FR 50274.	
32-007 .....	Operating and Maintenance Requirements.	3/23/2018	10/5/2018, 83 FR 50274.	
32-008 .....	Typically-Achievable Control Technology Requirements.	3/23/2018	10/5/2018, 83 FR 50274.	
32-009 .....	Additional Control Requirements for Stationary Sources of Air Contaminants.	3/23/2018	10/5/2018, 83 FR 50274.	
32-010 .....	Visible Air Contaminant Limitations.	3/23/2018	10/5/2018, 83 FR 50274.	
32-015 .....	Particulate Matter Emission Limitations for Sources Other than Fuel Burning Equipment, Refuse Burning Equipment, and Fugitive Emissions.	3/23/2018	10/5/2018, 83 FR 50274.	
32-020 .....	Particulate Matter Weight Standards—Existing Combustion Sources.	3/23/2018	10/5/2018, 83 FR 50274.	
32-030 .....	Particulate Matter Weight Standards—New Combustion Sources.	3/23/2018	10/5/2018, 83 FR 50274.	
32-045 .....	Process Weight Emission Limitations and Determination of Process Weight.	3/23/2018	10/5/2018, 83 FR 50274.	
32-050 .....	Concealment and Masking of Emissions.	3/23/2018	10/5/2018, 83 FR 50274.	
32-060 .....	Air Conveying Systems .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Gaseous Emission Limitations</b>				
32-065 .....	Sulfur Content of Fuels .....	3/23/2018	10/5/2018, 83 FR 50274.	
32-070 .....	Sulfur Dioxide Emission Limitations.	3/23/2018	10/5/2018, 83 FR 50274.	
32-090 .....	Other Emissions .....	3/31/2014	10/5/2018, 83 FR 50274.	
32-100 .....	Alternative Emission Controls (Bubble).	3/23/2018	10/5/2018, 83 FR 50274.	
32-8010 .....	Particulate Matter Emissions Standards for Process Equipment.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 33—Prohibited Practices and Control of Special Classes of Industry</b>				
33-005 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
33-060 .....	Board Products Industries (Hardboard, Particleboard, Plywood, Veneer).	3/23/2018	10/5/2018, 83 FR 50274.	
33-065 .....	Charcoal Producing Plants	3/23/2018	10/5/2018, 83 FR 50274.	
33-070 .....	Kraft Pulp Mills .....	3/23/2018	10/5/2018, 83 FR 50274	Except in (1) the definitions of “non-condensables”, “other sources”, and “TRS”, (3)(a), (4)(b) (5)(b), (6)(a), and (6)(b).

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
33–500 .....	Particulate Matter Emissions Standards for Process Equipment.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 34—Stationary Source Notification Requirements</b>				
34–005 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–010 .....	Applicability .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–015 .....	Request for Information .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–016 .....	Records: Maintaining and Reporting.	3/23/2018	10/5/2018, 83 FR 50274.	
34–017 .....	Enforcement; Credible Evidence.	3/23/2018	10/5/2018, 83 FR 50274.	
34–020 .....	Information Exempt from Disclosure.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Registration</b>				
34–025 .....	Registration is General .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–030 .....	Source Registration Requirements and Re-Registration and Maintaining Registration.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Notice of Construction and Approval of Plans</b>				
34–034 .....	Requirements for Construction.	3/23/2018	10/5/2018, 83 FR 50274.	
34–035 .....	Types of Construction/Modification Changes.	3/23/2018	10/5/2018, 83 FR 50274.	
34–036 .....	Notice to Construct .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–037 .....	Construction Approval .....	3/23/2018	10/5/2018, 83 FR 50274.	
34–038 .....	Approval to Operate .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 35—Stationary Source Testing and Monitoring</b>				
35–0010 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Sampling, Testing and Measurement</b>				
35–0110 .....	Applicability .....	3/23/2018	10/5/2018, 83 FR 50274.	
35–0120 .....	Program .....	3/23/2018	10/5/2018, 83 FR 50274.	
35–0130 .....	Stack Heights and Dispersion Techniques.	3/23/2018	10/5/2018, 83 FR 50274.	
35–0140 .....	Methods .....	3/23/2018	10/5/2018, 83 FR 50274.	
35–0150 .....	LRAPA Testing .....	3/31/2014	10/5/2018, 83 FR 50274.	
<b>Title 37—Air Contaminant Discharge Permits</b>				
37–0010 .....	Purpose .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0020 .....	Applicability and Jurisdiction.	3/23/2018	10/5/2018, 83 FR 50274.	
37–0025 .....	Types of Permits .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0030 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0040 .....	Application Requirements ..	3/23/2018	10/5/2018, 83 FR 50274.	
37–0052 .....	Construction ACDP .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0054 .....	Short Term Activity ACDPs	3/23/2018	10/5/2018, 83 FR 50274.	
37–0056 .....	Basic ACDPs .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0060 .....	General Air Contaminant Discharge Permits.	3/23/2018	10/5/2018, 83 FR 50274.	
37–0062 .....	General ACDP Attachments.	3/23/2018	10/5/2018, 83 FR 50274.	
37–0064 .....	Simple ACDPs .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0066 .....	Standard ACDPs .....	3/23/2018	10/5/2018, 83 FR 50274.	
37–0068 .....	Simple and Standard ACDP Attachments.	3/23/2018	10/5/2018, 83 FR 50274.	
37–0070 .....	Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site.	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
37-0082 .....	Termination or Revocation of an ACDP.	3/23/2018	10/5/2018, 83 FR 50274.	
37-0084 .....	LRAPA-Initiated Modification.	3/23/2018	10/5/2018, 83 FR 50274.	
37-0090 .....	Sources Subject to ACDPs and Fees.	3/23/2018	10/5/2018, 83 FR 50274.	
37-0094 .....	Temporary Closure .....	3/23/2018	10/5/2018, 83 FR 50274.	
37-8010 .....	Table 1—Activities and Sources.	3/23/2018	10/5/2018, 83 FR 50274.	
37-8020 .....	Table 2—Air Contaminant Discharge Permits.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 38—New Source Review</b>				
38-0010 .....	Applicability and General Prohibitions, General Requirements and Jurisdiction.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0020 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
38-0025 .....	Major Modification .....	3/23/2018	10/5/2018, 83 FR 50274.	
38-0030 .....	New Source Review Procedural Requirements.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0034 .....	Exemptions .....	3/23/2018	10/5/2018, 83 FR 50274.	
38-0038 .....	Fugitive and Secondary Emissions.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0040 .....	Review of Sources Subject to Major NSR or Type A State NSR for Compliance With Regulations.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Major New Source Review</b>				
38-0045 .....	Requirements for Sources in Sustainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0050 .....	Requirements for Sources in Nonattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0055 .....	Requirements for Sources in Reattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0060 .....	Records; Maintaining and Reporting.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0070 .....	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>State New Source Review</b>				
38-0245 .....	Requirements for Sources in Sustainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0250 .....	Requirements for Sources in Nonattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0255 .....	Requirements for Sources in Reattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0260 .....	Requirements for Sources in Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0270 .....	Requirement for Sources in Attainment and Unclassified Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Net Air Quality Benefit Emission Offsets</b>				
38-0500 .....	Net Air Quality Benefit for Sources Locating Within or Impacting Designated Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0510 .....	Common Offset Requirements.	3/23/2018	10/5/2018, 83 FR 50274	Except (3).

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
38-0530 .....	Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38-0540 .....	Sources in a Designated Area Impacting Other Designated Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 39—Contingency for PM<sub>10</sub> Sources in Eugene-Springfield Non-Attainment Area</b>				
39-001 .....	Purpose .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-005 .....	Relation to Other Rules .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-010 .....	Applicability .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-015 .....	Definitions .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-020 .....	Compliance Schedule for Existing Sources.	11/13/1991	8/24/1994, 59 FR 43483.	
39-025 .....	Wood-Waste Boilers .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-030 .....	Veneer Dryers .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-035 .....	Particle Board Plants and Wood Particle Dryers.	11/13/1991	8/24/1994, 59 FR 43483.	
39-040 .....	Kraft Pulp Mills .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-050 .....	Air Conveying Systems .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-055 .....	Fugitive Dust .....	11/13/1991	8/24/1994, 59 FR 43483.	
39-060 .....	Open Burning .....	11/13/1991	8/24/1994, 59 FR 43483.	
<b>Title 40—Air Quality Analysis Requirements</b>				
40-0010 .....	Purpose .....	3/23/2018	10/5/2018, 83 FR 50274.	
40-0020 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
40-0030 .....	Procedural Requirements ..	3/23/2018	10/5/2018, 83 FR 50274.	
40-0040 .....	Air Quality Models .....	3/23/2018	10/5/2018, 83 FR 50274.	
40-0045 .....	Requirements for Analysis in Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40-0050 .....	Requirements for Analysis in PSD Class II and Class III Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40-0060 .....	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40-0070 .....	Requirements for Demonstrating Compliance with Air Quality Related Values Protection.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 41—Emission Reduction Credits</b>				
41-0010 .....	Applicability .....	3/31/2014	10/5/2018, 83 FR 50274.	
41-0020 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
41-0030 .....	Emission Reduction Credits	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 42—Stationary Source Plant Site Emission Limits</b>				
42-0010 .....	Policy .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0020 .....	Applicability .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0030 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Criteria for Establishing Plant Site Emission Limits</b>				
42-0035 .....	General Requirements for Establishing All PSELs.	3/23/2018	10/5/2018, 83 FR 50274.	
42-0040 .....	Generic Annual PSEL .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0041 .....	Source Specific Annual PSEL.	3/23/2018	10/5/2018, 83 FR 50274.	
42-0042 .....	Short Term PSEL .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0046 .....	Netting Basis .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0048 .....	Baseline Period and Baseline Emission Rate.	3/23/2018	10/5/2018, 83 FR 50274.	
42-0051 .....	Actual Emissions .....	3/23/2018	10/5/2018, 83 FR 50274.	
42-0055 .....	Unassigned Emissions .....	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
42-0080 .....	Plant Site Emission Limit Compliance.	3/23/2018	10/5/2018, 83 FR 50274.	
42-0090 .....	Combining and Splitting Sources and Changing Primary SIC Code.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 47—Rules for Outdoor Burning</b>				
47-001 .....	General Policy .....	7/13/2018	2/20/2019, 84 FR 5000.	
47-005 .....	Exemptions from these Rules.	7/13/2018	2/20/2019, 84 FR 5000.	
47-010 .....	Definitions .....	7/13/2018	2/20/2019, 84 FR 5000 .....	Except the definition of “nuisance”. Except (1)(d) and (1)(h).
47-015 .....	Open Burning Requirements.	7/13/2018	2/20/2019, 84 FR 5000 .....	
47-020 .....	Letter Permits .....	7/13/2018	2/20/2019, 84 FR 5000 .....	Except (3), (9)(i), and (10).
<b>Title 48—Rules for Fugitive Emissions</b>				
48-001 .....	General Policy .....	3/23/2018	10/5/2018, 83 FR 50274.	
48-005 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
48-010 .....	General Applicability .....	3/23/2018	10/5/2018, 83 FR 50274.	
48-015 .....	General Requirements for Fugitive Emissions.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 50—Ambient Air Standards and PSD Increments</b>				
50-001 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Ambient Air Quality Standards</b>				
50-005 .....	Purpose and Scope of Ambient Air Quality Standards.	3/23/2018	10/5/2018, 83 FR 50274.	
50-015 .....	Suspended Particulate Matter.	3/23/2018	10/5/2018, 83 FR 50274.	
50-025 .....	Sulfur Dioxide .....	3/23/2018	10/5/2018, 83 FR 50274.	
50-030 .....	Carbon Monoxide .....	3/23/2018	10/5/2018, 83 FR 50274.	
50-035 .....	Ozone .....	3/23/2018	10/5/2018, 83 FR 50274.	
50-040 .....	Nitrogen Dioxide .....	3/23/2018	10/5/2018, 83 FR 50274.	
50-045 .....	Lead .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>PSD Increments</b>				
50-050 .....	General .....	3/23/2018	10/5/2018, 83 FR 50274.	
50-055 .....	Ambient Air PSD Increments.	3/23/2018	10/5/2018, 83 FR 50274.	
50-060 .....	Ambient Air Ceilings .....	3/31/2014	10/5/2018, 83 FR 50274.	
50-065 .....	Ambient Air Quality Impact Levels for Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 51—Air Pollution Emergencies</b>				
51-005 .....	Introduction .....	3/23/2018	10/5/2018, 83 FR 50274.	
51-007 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
51-010 .....	Episode Stage Criteria for Air Pollution Emergencies.	3/23/2018	10/5/2018, 83 FR 50274.	
51-011 .....	Special Conditions .....	3/23/2018	10/5/2018, 83 FR 50274.	
51-015 .....	Source Emission Reduction Plans.	3/23/2018	10/5/2018, 83 FR 50274.	
51-020 .....	Preplanned Abatement Strategies.	3/23/2018	10/5/2018, 83 FR 50274.	
51-025 .....	Implementation .....	3/23/2018	10/5/2018, 83 FR 50274.	
Table I .....	Air Pollution Episode, Alert Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	
Table II .....	Air Pollution Episode, Warning Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	



TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON <sup>1</sup>—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Table III .....	Air Pollution Episode, Emergency Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	

<sup>1</sup> EPA's approval is limited to the extent the provisions relate to section 110 of the Clean Air Act and determining compliance with and for purposes of implementation of SIP-approved requirements.

(d) *EPA approved state source-specific requirements.*

EPA APPROVED OREGON SOURCE-SPECIFIC REQUIREMENTS <sup>1</sup>

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Industrial Laundry & Dry Cleaners.	26–3025 .....	12/9/1980 .....	8/27/1981, 46 FR 43142	Air Contaminant Discharge Permit.
VANPLY, Inc. & Spalding Pulp & Paper Co.	Stipulation and Consent Final Order.	12/30/1980 .....	8/27/1981, 46 FR 43142	Transfer by VANPLY, INC. of a VOC Offset to Spalding Pulp & Paper Co.
Spaulding Pulp and Paper Co.	36–6041 .....	12/11/1980 .....	8/27/1981, 46 FR 43142	Air Contaminant Discharge Permit—Addendum No. 1.
Weyerhaeuser Company—Bly, Oregon.	18–0037 .....	2/3/1981 .....	11/6/1981, 46 FR 55101	Air Contaminant Discharge Permit—Conditions 5 and 6.
Intel Corporation .....	34–2681 .....	9/24/1993 (State effective date of Title V Program).	7/18/1996, 61 FR 37393	Oregon Title-V Operating Permit—Page 11.
Cascade General (Port of Portland).	26–3224 .....	10/4/1995 .....	3/7/1997, 62 FR 10455 ..	Air Contaminant Discharge Permit—Condition 19 of Addendum 2.
White Consolidated Inc ....	34–2060 .....	8/1/1995 .....	3/7/1997, 62 FR 10455 ..	Air Contaminant Discharge Permit—Conditions 11, 12 and 13 in Addendum No. 2.
PCC Structurals, Inc .....	26–1867 .....	4/4/1997 .....	6/20/1997, 62 FR 33548	Air Contaminant Discharge Permit—Conditions 19, 20 and 21 in Addendum No. 2.
Dura Industries .....	26–3112 .....	9/14/1995 .....	3/31/1998, 63 FR 15293	Air Contaminant Discharge Permit.
Ostrander Construction Company Fremont Sawmill.	ACDP No. 19–0002 .....	4/29/1998 .....	9/21/1999, 64 FR 51051	Air Contaminant Discharge Permit.

<sup>1</sup> The EPA does not have the authority to remove these source-specific requirements in the absence of a demonstration that their removal would not interfere with attainment or maintenance of the NAAQS, violate any prevention of significant deterioration increment or result in visibility impairment. The Oregon Department of Environmental Quality may request removal by submitting such a demonstration to the EPA as a SIP revision.

(e) *EPA approved nonregulatory provisions and quasi-regulatory measures.*

TABLE 1—OREGON STATE STATUTES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanations
ORS Chapter 468 .....	General Administration, Enforcement, Pollution Control Facilities Tax Credit.	11/4/1993	7/19/1995, 60 FR 37013.	
ORS Chapter 468A .....	Air Pollution Control, Regional Air Quality Control Authorities, Motor Vehicle Pollution Control, Field Burning and Propane.	11/4/1993	7/19/1995, 60 FR 37013	Except 468A.075 and 468A.330.
ORS Chapter 468A.330 ....	Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	11/4/1993	9/5/1995, 60 FR 46025.	

TABLE 2—OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Oregon Administrative Rules</b>				
<b>Division 11—Rules of General Applicability and Organization</b>				
011–0005 .....	Definitions .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0009 .....	Incorporation of Attorney General's Uniform and Model Rules.	3/20/2008	4/25/2013, 78 FR 24347.	
011–0010 .....	Notice of Rulemaking .....	3/20/2008	4/25/2013, 78 FR 24347.	
011–0024 .....	Rulemaking Process .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0029 .....	Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0046 .....	Petition to Promulgate, Amend, or Repeal Rule: Content of Petition, Filing or Petition.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0053 .....	Periodic Rule Review .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0061 .....	Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0310 .....	Purpose .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0330 .....	Requests for Review or to Obtain Copies of Public Records.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0340 .....	Costs for Record Review and Copying.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0360 .....	Collecting Fees .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0370 .....	Certification of Copies of Records.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0380 .....	Fee Waivers and Reductions.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0390 .....	Exempt Records .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0500 .....	Contested Case Proceedings Generally.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0510 .....	Agency Representation by Environmental Law Specialist.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0515 .....	Authorized Representative of a Participant other than a Natural Person in a Contested Case Hearing.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0520 .....	Liability for the Acts of a Person's Employees.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0525 .....	Service and Filing of Documents.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0530 .....	Requests for Hearing .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0535 .....	Final Orders by Default .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0540 .....	Consolidation or Bifurcation of Contested Case Hearings.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0545 .....	Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0550 .....	Discovery .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0555 .....	Subpoenas .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0565 .....	Immediate Review .....	1/6/2014	10/23/2015, 80 FR 64346.	
011–0570 .....	Permissible Scope of Hearing.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0573 .....	Proposed Orders in Contested Cases.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0575 .....	Review of Proposed Orders in Contested Cases.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0580 .....	Petitions for Reconsideration or Rehearing.	1/6/2014	10/23/2015, 80 FR 64346.	

TABLE 2—OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
011–0585 .....	Petitions for a Stay of the Effect of a Final Order.	1/6/2014	10/23/2015, 80 FR 64346.	
<b>Division 12—Enforcement Procedure and Civil Penalties</b>				
012–0026 .....	Policy .....	1/6/2014	10/23/2015, 80 FR 64346.	
012–0027 .....	Rule Effective Date .....	3/29/2006	4/25/2013, 78 FR 24347.	
012–0028 .....	Scope of Applicability .....	1/6/2014	10/23/2015, 80 FR 64346.	
012–0030 .....	Definitions .....	1/6/2014	10/23/2015, 80 FR 64346.	
012–0038 .....	Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0041 .....	Formal Enforcement Actions.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0042 .....	Determination of Base Penalty.	5/13/2005	4/25/2013, 78 FR 24347.	
012–0045 .....	Civil Penalty Determination Procedure.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0053 .....	Classification of Violations that Apply to all Programs.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0054 .....	Air Quality Classification of Violations.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0073 .....	Environmental Cleanup Classification of Violation.	3/29/2006	4/25/2013, 78 FR 24347.	
012–0082 .....	Contingency Planning Classification of Violations.	3/29/2006	4/25/2013, 78 FR 24347.	
012–0130 .....	Determination of Violation Magnitude.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0135 .....	Selected Magnitude Categories.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0140 .....	Determination of Base Penalty.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0145 .....	Determination of Aggravating or Mitigating Factors.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0150 .....	Determination of Economic Benefit.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0155 .....	Additional or Alternate Civil Penalties.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0160 .....	DEQ Discretion Regarding Penalty Assessment.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0162 .....	Inability to Pay the Penalty	1/6/2014	10/23/2015, 80 FR 64346.	
012–0165 .....	Stipulated Penalties .....	1/6/2014	10/23/2015, 80 FR 64346.	
012–0170 .....	Compromise or Settlement of Civil Penalty by DEQ.	1/6/2014	10/23/2015, 80 FR 64346.	
<b>Division 200—General Air Pollution Procedures and Definitions</b>				
<b>Conflicts of Interest</b>				
200–0100 .....	Purpose .....	4/16/2015	10/11/2017, 82 FR 47122.	
200–0110 .....	Public Interest Representation.	4/16/2015	10/11/2017, 82 FR 47122.	
200–0120 .....	Disclosure of Potential Conflicts of Interest.	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 209—Public Participation</b>				
209–0070 .....	Hearing Procedures .....	4/16/2015	10/11/2017, 82 FR 47122.	
<b>Division 262—Heat Smart Program for Residential Wood Stoves and Other Solid Fuel Heating Devices</b>				
262–0050 .....	Residential Woodheating—Civil Penalties.	10/14/1999	1/22/2003, 68 FR 2891.	

TABLE 3—LANE REGIONAL AIR PROTECTION AGENCY REGULATIONS APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Title 13—General Duties and Powers of Board and Director</b>				
13-005 .....	Authority of the Agency .....	3/31/2014	10/5/2018, 83 FR 50274.	
13-010 .....	Duties and Powers of the Board of Directors .....	3/31/2014	10/5/2018, 83 FR 50274.	
13-020 .....	Duties and Function of the Director .....	3/31/2014	10/5/2018, 83 FR 50274.	
13-025 .....	Conflict of Interest .....	3/31/2014	10/5/2018, 83 FR 50274.	
13-030 .....	Advisory Committee .....	3/31/2014	10/5/2018, 83 FR 50274.	
13-035 .....	Public Records and Confidential Information .....	3/31/2014	10/5/2018, 83 FR 50274.	
<b>Title 14—Rules of Practice and Procedure</b>				
14-110 .....	Definitions .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Rulemaking</b>				
14-115 .....	Rulemaking Notice .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-120 .....	Rulemaking Hearings and Process .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-125 .....	Temporary Rules .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-130 .....	Petition to Promulgate, Amend or Repeal Rule—Content of Petition, Filing of Petition.	3/23/2018	10/5/2018, 83 FR 50274.	
14-135 .....	Declaratory Rulings .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Contested Cases</b>				
14-140 .....	Contested Case Proceedings Generally .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-145 .....	Agency Representation by Environmental Law Specialist ...	3/23/2018	10/5/2018, 83 FR 50274.	
14-147 .....	Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing.	3/23/2018	10/5/2018, 83 FR 50274.	
14-150 .....	Liability for the Acts of a Person's Employees .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-155 .....	Consolidation or Bifurcation of Contested Case Hearings ..	3/23/2018	10/5/2018, 83 FR 50274.	
14-160 .....	Final Orders .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-165 .....	Default Orders .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-170 .....	Appeal to the Board .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-175 .....	Power of the Director .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-185 .....	Request for Stay Pending Judicial Review .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-190 .....	Request for Stay—Motion to Intervene .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-200 .....	Request for Stay—Agency Determination .....	3/23/2018	10/5/2018, 83 FR 50274.	
14-205 .....	Request for Stay—Time Frames .....	3/23/2018	10/5/2018, 83 FR 50274.	
<b>Title 15—Enforcement Procedures and Civil Penalties</b>				
15-001 .....	Policy .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-003 .....	Scope of Applicability .....	6/13/1995	8/3/2001, 66 FR 40616.	
15-005 .....	Definitions .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-010 .....	Consolidation of Proceedings .....	6/13/1995	8/3/2001, 66 FR 40616.	
15-015 .....	Notice of Violation .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-018 .....	Notice of Permit Violations and Exceptions .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-020 .....	Enforcement Actions .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-025 .....	Civil Penalty Schedule Matrices .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-030 .....	Civil Penalty Determination Procedure (Mitigating and Ag- gravating Factors).	9/14/2018	2/20/2019, 84 FR 5000.	
15-035 .....	Written Notice of Civil Penalty Assessment—When Penalty Payable.	9/14/2018	2/20/2019, 84 FR 5000.	
15-040 .....	Compromise or Settlement of Civil Penalty by Director .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-045 .....	Stipulated Penalties .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-050 .....	Additional Civil Penalties .....	6/13/1995	8/3/2001, 66 FR 40616.	
15-055 .....	Air Quality Classification of Violation .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-057 .....	Determination of Violation Magnitude .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-060 .....	Selected Magnitude Categories .....	9/14/2018	2/20/2019, 84 FR 5000.	
15-065 .....	Appeals .....	9/14/2018	2/20/2019, 84 FR 5000.	
<b>Title 31—Public Participation</b>				
31-0070 .....	Hearing Procedures .....	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—CITY AND COUNTY ORDINANCES APPROVED BUT NOT INCORPORATED BY REFERENCE

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
Codified Ordinances of Jackson County 1810.09.	Abatement; Legal Proceedings	12/20/1989 (county passed)	6/19/2006, 71 FR 35163.	
Codified Ordinances of Jackson County 1810.99.	Penalty .....	10/29/2003 (county passed)	6/19/2006, 71 FR 35163.	
Code of the City of Medford, Oregon: 7.226.	Abatement; Legal Proceedings	11/20/1989 (county effective).	6/19/2006, 71 FR 35163.	
Code of the City of Medford, Oregon: 7.300.	Penalty .....	4/6/2000 (county effective)	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.100.	Abatement-Notice .....	1966 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.110.	Abatement-By owner .....	1966 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.120.	Abatement-By city .....	1966 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.130.	Abatement-Assessment of costs.	1966 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.140.	Summary abatement .....	1966 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.150.	Penalty .....	1995 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Ashland Municipal Code: 10.30.050.	Definitions .....	1993 (city effective) .....	6/19/2006, 71 FR 35163.	
City of Ashland Municipal Code: 9.24.060.	Penalty .....	1998 (city effective) .....	6/19/2006, 71 FR 35163.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
<b>Volume 2—The Federal Clean Air Act Implementation Plan</b>				
<b>Section 1—Introduction</b>				
Introduction .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
<b>Section 2—General Administration</b>				
General Administration ...	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Agency Organization .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Legal Authority .....	Statewide .....	7/29/1992	7/19/1995, 60 FR 37013.	
Resources .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Intergovernmental co-operation.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Miscellaneous Provisions	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Small Business Assistance Program.	Statewide .....	11/16/1992	9/05/1995, 60 FR 46025.	
<b>Section 3—Statewide Regulatory Provisions</b>				
Statewide Regulatory Provisions.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006	Refer to section (c) and (d) for approved regulations incorporated by reference.
Oregon Administrative Rules and Source-Specific RACT determinations.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006	Refer to section (c) for approved regulations incorporated by reference and section (d) for Source-Specific RACT determinations.
Lane Regional Air Protection Agency Regulations.	Lane County .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006	Refer to section (c) for approved regulations incorporated by reference.
Smoke Management Plan Administrative Rule.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006	Refer to section (c) for approved regulations incorporated by reference (OAR chapter 629 43–043).
<b>Section 4—Control Strategies for Nonattainment Areas</b>				
Introduction .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—  
Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Attainment and Maintenance Planning—Carbon Monoxide (CO)				
Carbon Monoxide Attainment Plan.	Salem .....	6/20/1979; 6/29/1979	6/24/1980, 45 FR 42265.	CO contingency plan revision to satisfy 172(c)(9).
Carbon Monoxide Attainment Plan.	Eugene-Springfield .....	6/20/1979; 6/29/1979	6/24/1980, 45 FR 42265.	
Carbon Monoxide Attainment Plan.	Portland-Vancouver .....	7/20/1982	10/07/1982, 47 FR 44261.	
Carbon Monoxide Attainment Plan.	Medford-Ashland .....	10/09/1985	2/13/1987, 52 FR 4620.	
Carbon Monoxide Attainment Plan.	Grants Pass .....	11/24/1986	1/15/1988, 53 FR 1020.	
Carbon Monoxide Maintenance Plan.	Eugene-Springfield .....	12/28/1989	12/06/1993, 58 FR 64161.	
Carbon Monoxide Attainment Plan.	Grants Pass, Medford, Portland and Klamath Falls.	11/15/1993	6/28/1994, 59 FR 33202	
Carbon Monoxide Maintenance Plan.	Portland .....	8/30/1996	9/02/1997, 62 FR 46208.	
Carbon Monoxide Maintenance Plan.	Grants Pass .....	11/10/1999	8/31/2000, 65 FR 52932.	
Carbon Monoxide Maintenance Plan.	Klamath Falls .....	11/20/2000	9/20/2001, 66 FR 48349.	
Carbon Monoxide Maintenance Plan.	Medford .....	5/31/2001	7/24/2002, 67 FR 48388.	
Carbon Monoxide 2nd 10-year Maintenance Plan.	Portland .....	12/27/2004	1/24/2006, 71 FR 3768.	
Carbon Monoxide Limited Maintenance Plan.	Salem-Keizer .....	8/09/2007	12/30/2008, 73 FR 79655.	
Carbon Monoxide 2nd 10-year Maintenance Plan Update.	Portland .....	1/14/2014	5/22/2014, 79 FR 29359	
Carbon Monoxide 2nd 10-year Limited Maintenance Plan.	Grants Pass .....	4/22/2015	7/28/2015, 80 FR 44864.	
Carbon Monoxide 2nd 10-year Limited Maintenance Plan.	Medford .....	12/11/2015	7/20/2016, 81 FR 47029.	
Attainment and Maintenance Planning—Ozone				
Ozone Attainment Plan ...	Salem .....	10/16/1980	4/12/1982, 47 FR 15587.	Portland-Vancouver AQMA (Oregon portion) & Salem Kaizer Area 8-hour Ozone (110(a)(1)) Maintenance Plan.
Ozone Attainment Plan ...	Portland-Vancouver .....	7/20/1982	10/07/1982, 47 FR 44261.	
Ozone Maintenance Plan	Medford-Ashland .....	2/28/1985	6/04/1986, 51 FR 20285.	
Ozone Maintenance Plan	Portland-Vancouver .....	8/30/1996	5/19/1997, 62 FR 27204.	
Ozone Maintenance Plan	Portland-Vancouver & Salem-Keizer.	8/09/2005; 5/22/2007	12/19/2011, 76 FR 78571	
Attainment and Maintenance Planning—Total Suspended Particulate (TSP)				
TSP Attainment Plan .....	Portland-Vancouver .....	3/24/1981	4/12/1982, 47 FR 15587.	
TSP Attainment Plan .....	Eugene-Springfield .....	2/23/1981	4/12/1982, 47 FR 15587.	
TSP Attainment Plan .....	Medford-Ashland .....	4/25/1983	8/15/1984, 49 FR 32574.	
Attainment and Maintenance Planning—Particulate Matter (PM <sub>10</sub> )				
PM <sub>10</sub> Attainment Plan .....	Grants Pass .....	11/15/1991	12/17/1993, 58 FR 65934.	
PM <sub>10</sub> Attainment Plan .....	Eugene-Springfield .....	11/15/1991	8/24/1994, 59 FR 43483.	
PM <sub>10</sub> Attainment Plan .....	LaGrande .....	11/15/1991	3/15/1995, 60 FR 8563.	
PM <sub>10</sub> Attainment Plan .....	Klamath Falls .....	11/15/1991; 9/20/1995	4/14/1997, 62 FR 18047.	
PM <sub>10</sub> Attainment Plan .....	Oakridge .....	12/09/1996	3/15/1999, 64 FR 12751.	
PM <sub>10</sub> Attainment Plan .....	Lakeview .....	6/01/1995	9/21/1999, 64 FR 51051.	
PM <sub>10</sub> Maintenance Plan	Klamath Falls .....	11/04/2002	10/21/2003, 68 FR 60036.	
PM <sub>10</sub> Maintenance Plan	Grants Pass .....	11/04/2002	10/27/2003, 68 FR 61111.	
PM <sub>10</sub> Attainment Plan	Medford-Ashland .....	3/10/2005	6/19/2006, 71 FR 35163.	
and Maintenance Plan.				

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
PM <sub>10</sub> Maintenance Plan	La Grande .....	10/25/2005	6/19/2006, 71 FR 35161.	
PM <sub>10</sub> Maintenance Plan	Lakeview .....	10/25/2005	6/19/2006, 71 FR 35159.	
PM <sub>10</sub> Limited Maintenance Plan.	Eugene-Springfield .....	1/13/2012	4/11/2013, 78 FR 21547.	
PM <sub>10</sub> 2nd 10-year Limited Maintenance Plan.	Grants Pass .....	4/22/2015	7/30/2015, 80 FR 45431.	
Attainment and Maintenance Planning—Particulate Matter (PM <sub>2.5</sub> )				
PM <sub>2.5</sub> Attainment Plan ....	Klamath Falls .....	12/12/2012	6/06/2016, 81 FR 36176.	Attainment date extension see final rule published 7/18/2016.
2012 PM <sub>2.5</sub> Attainment Plan.	Oakridge-Westfir .....	12/12/2012	10/21/2016, 81 FR 72714	
Updated PM <sub>2.5</sub> Attainment Plan.	Oakridge-Westfir .....	1/20/2017	2/08/2018, 83 FR 5537.	
Section 5—Control Strategies for Attainment and Nonattainment Areas				
Control Strategies for Attainment and Nonattainment Areas.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	Meets CAA requirements section 169A and 40 CFR 51.308(e) regarding BART and the requirements of 40 CFR 51.308(d)(2) and (d)(4)(v) regarding the calculation of baseline and natural conditions of OR Wilderness areas and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.  Meeting CAA requirements section 169A, and 40 CFR 51.308(d)(1) and (3).
Statewide Control Strategies for Lead.	Statewide .....	1/24/1983	5/18/1983, 48 FR 22298.	
Motor Vehicle Inspection and Maintenance.	Statewide .....	11/5/1999; 9/15/2000; 1/27/2000; 1/10/2003; 4/22/2004	11/27/2004, 69 FR 67819.	
Test Procedures and Standards.	Statewide .....	4/19/2004	11/22/2004, 69 FR 67819.	
Visibility Protection Plan	Statewide .....	1/22/2003	3/15/2005, 70 FR 12587.	
Prevention of Significant Deterioration.	Statewide .....	7/11/1986	7/30/1991, 56 FR 36006.	
Oregon Regional Haze Plan—Section 308.	Statewide .....	12/9/2010	7/05/2011, 76 FR 38997	
Oregon Regional Haze SIP revision.	Statewide .....	12/9/2010; 2/01/2011	8/22/2012, 77 FR 50611	
Regional Haze Progress Report.	Statewide .....	7/18/2017	5/17/2018, 83 FR 22853.	
Section 6—Ambient Air Quality Monitoring Program				
Ambient Air Quality Monitoring Program.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Air Monitoring Network ...	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Data Handling and Analysis Procedures.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Episode Monitoring .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 7—Emergency Plan				
Emergency Action Plan ..	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 8—Public Involvement				
Public Involvement .....	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
<b>Section 9—Plan Revisions and Reporting</b>				
Plan Revisions and Reporting.	Statewide .....	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
<b>110(a)(2) Infrastructure and Intersate Transport</b>				
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide .....	6/23/2010; 12/23/2010	6/09/2011, 76 FR 33650	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 1997 PM <sub>2.5</sub> NAAQS.	Statewide .....	6/23/2010; 12/23/2010	6/09/2011, 76 FR 33650	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide .....	12/20/2010	7/05/2011, 76 FR 38997	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.
Interstate Transport for the 1997 PM <sub>2.5</sub> NAAQS.	Statewide .....	12/20/2010	7/05/2011, 76 FR 38997	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide .....	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747	This action addresses CAA section 110(a)(2)(D)(i) and section 110(a)(2)(D)(i)(II).
Interstate Transport for the 1997 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747	This action addresses CAA section 110(a)(2)(D)(i) and section 110(a)(2)(D)(i)(II).
Interstate Transport for the 2006 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747	This action addresses CAA section 110(a)(2)(D)(i)(II).
Infrastructure for the 1997 8-hour ozone NAAQS.	Statewide .....	9/25/2008	5/21/2012, 77 FR 29904	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2008 lead NAAQS.	Statewide .....	12/27/2013	6/24/2014, 79 FR 35693	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 1997 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	9/25/2008	8/01/2014, 78 FR 46514	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2006 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	8/17/2011	8/01/2014, 78 FR 46514	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2008 ozone NAAQS.	Statewide .....	12/19/2011	8/01/2014, 78 FR 46514	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate Transport for the 2006 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	12/23/2010	8/01/2014, 78 FR 46514	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.
Interstate Transport for the 2008 ozone NAAQS.	Statewide .....	12/23/2010	8/01/2014, 78 FR 46514	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to PSD and visibility.
Interstate Transport for the 2006 24-hour PM <sub>2.5</sub> NAAQS.	Statewide .....	6/23/2010	1/16/2015, 80 FR 2313 ..	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 2008 ozone NAAQS.	Statewide .....	6/28/2010	12/21/2015, 80 FR 79266	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 2008 lead NAAQS.	Statewide .....	10/20/15	5/16/2016, 81 FR 30181	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).



TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Interstate Transport for the 2010 nitrogen dioxide NAAQS.	Statewide .....	10/20/15	5/16/2016, 81 FR 30181	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
Infrastructure for the 2010 nitrogen dioxide NAAQS.	Statewide .....	12/27/2013	5/24/2018, 83 FR 24034	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2010 sulfur dioxide NAAQS.	Statewide .....	12/27/2013	5/24/2018, 83 FR 24034	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2012 PM <sub>2.5</sub> NAAQS.	Statewide .....	10/20/2015	5/24/2018, 83 FR 24034	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate Transport for the 2012 PM <sub>2.5</sub> NAAQS.	Statewide .....	10/20/2015	9/18/2018, 83 FR 47073	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
<b>EPA-Approved Oregon State Directives</b>				
Directive 1–4–1–601 .....	Operational Guidance for the Oregon Smoke Management Program.	8/26/1993	11/1/2001, 66 FR 55105.	
ODEQ–LRAPA Stringency Directive, Attachment B.	DEQ analysis and recommendations regarding which of the proposed rules that the EQC should require LRAPA to implement directly.	4/22/2015	10/11/2017, 82 FR 47122..	
<b>EPA-Approved Manuals</b>				
.....	ODEQ Source Sampling Manual.	4/22/2015	10/11/2017, 82 FR 47122	Volumes I and II for purposes of the limits approved into the SIP.
.....	ODEQ Continuous Emissions Monitoring Manual.	4/22/2015	10/11/2017, 82 FR 47122	For purposes of the limits approved into the SIP.

§§ 52.1989 through 52.1992 [Removed and Reserved]

■ 3. Sections 52.1989 through 52.1992 are removed and reserved.

[FR Doc. 2019–06881 Filed 4–9–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2018–0301; FRL–9991–63–Region 4]

### Air Plan Approval; NC: Redoption of Air Quality Rules and Removal of the Oxygenated Gasoline Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), on March 21, 2018, readopting and amending several air quality rules, and requesting to remove the rules for the oxygenated gasoline program. This SIP revision also contains a non-interference demonstration, which concludes that removing the oxygenated gasoline program would not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). EPA has determined that North Carolina's March 21, 2018, SIP revision is consistent with the

applicable provisions of the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective May 10, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0301. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9992. Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

EPA is taking final action to approve North Carolina's March 21, 2018, SIP revision seeking to readopt and amend various air quality rules and to remove the rules for the oxygenated gasoline program from North Carolina's SIP.

North Carolina requested that EPA approve the removal of rules in 15A NCAC 2D<sup>1</sup> Section .1300, *Oxygenated Gasoline Standard* (hereinafter referred to as the oxygenated gasoline program) from the North Carolina SIP. To support the request to remove the rules for the oxygenated gasoline program from the SIP, North Carolina's SIP revision contained technical support material to demonstrate that the removal of the program will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

In addition, the SIP revision addressed State rules amended and readopted in 15A NCAC Subchapter 2D sections .0100, *Definitions and References*, .0200, *Air Pollution Sources*, .0300, *Air Pollution Emergencies*, and .0400, *Ambient Air Quality Standards*. More specifically, the following rules were amended and updated:

.0101, *Definitions*  
.0103, *Copies of Referenced Federal Regulations*  
.0104, *Incorporation by Reference*

.0105, *Mailing List*  
.0201, *Classification of Air Pollution Sources*  
.0202, *Registration of Air Pollution Sources*  
.0302, *Episode Criteria*  
.0303, *Emission Reduction Plans*  
.0304, *Preplanned Abatement Program*  
.0305, *Emission Reduction Plan: Alert Level*  
.0306, *Emission Reduction Plan: Warning Level*  
.0307, *Emission Reduction Plan: Emergency Level*  
.0401, *Purpose*  
.0402, *Sulfur Oxides*  
.0404, *Carbon Monoxide*  
.0407, *Nitrogen Dioxide*  
.0408, *Lead*  
.0409, *PM<sub>10</sub> Particulate Matter*  
.0410, *PM<sub>2.5</sub> Particulate Matter*

Rule .0101, *Definitions*, is amended to update the format of units and references while, Rules .0103, .0104, and .0105 are amended to update the agency name, addresses and to include web referenced documents and costs.

Section .0200, *Air Pollution Sources*, is amended for clarity and to update the formatting and references. EPA notes that the proposed rule (*see* 84 FR 2109) dated February 6, 2019, included an error by listing Section .0200, *Air Pollution Sources*, in the discussion as both rules that were submitted for readoption only and as rules that were being amended. These rules had minor changes and should have been included in the amended rules section. EPA further notes that the changes—along with the rest of the March 21, 2018, SIP submittal—were available to the public during the comment period in the docket of this action.

Section .0300, *Air Pollution Emergencies*, addresses the prevention of buildup of air contaminants during an air pollution episode to prevent a public health emergency. Rule .0302 is amended to update the format of units, to update who proclaims air quality alerts and warnings and declarations of emergency at various pollutant levels requiring abatement actions from the Director to the Secretary's level with concurrence of the Governor, to remove obsolete pollutant levels triggering such proclamations or declarations and to renumber the subsections because of the changes. The amendments to Rules .0303 and .0304 update the format of references for emission reduction plans and preplanned abatement programs. Rules .0305, .0306, and .0307 are amended to eliminate redundant language in paragraph (b)(4) that is already reflected in Paragraph (a)(2) for open burning requirements in emission reduction plans.

Section .0400, *Ambient Air Quality Standards*, contains the ambient air quality standards and associated monitoring methodologies for the State

and to be consistent with the NAAQS. Specifically, Rules .0401 and .0409, and .0410 are amended to update the format of units and references, while administrative changes were made to .0402, .0404, .0407, and .0408.

EPA proposed approval of the North Carolina March 21, 2018, SIP revision to remove the oxygenated gasoline program and amend and re-adopt state regulations, as mentioned above, on February 6, 2019 (*see* 84 FR 2109). The details of North Carolina's submission and the rationale for EPA's actions are explained in the proposed rulemaking. EPA did not receive any relevant comments on the proposed action. EPA is now taking final action to approve the above-referenced revision.

**II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference the following air quality rules in Subchapter 2D Air Pollution Control Requirements, Sections .0101, *Definitions*, .0103, *Copies of Referenced Federal Regulations*, .0104, *Incorporation by Reference*, .0105, *Mailing List*, .0201, *Classification of Air Pollution Sources*, .0202, *Registration of Air Pollution Sources*, .0302, *Episode Criteria*, .0303, *Emission Reduction Plans*, .0304, *Preplanned Abatement Program*, .0305, *Emission Reduction Plan: Alert Level*, .0306, *Emission Reduction Plan: Warning Level*, .0307, *Emission Reduction Plan: Emergency Level*, .0401, *Purpose*, .0402, *Sulfur Oxides*, .0404, *Carbon Monoxide*, .0407, *Nitrogen Dioxide*, .0408, *Lead*, .0409, *PM<sub>10</sub> Particulate Matter*, .0410, *PM<sub>2.5</sub> Particulate Matter*, state effective January 1, 2018. EPA is also finalizing the repeal of the oxygenated gasoline rules under Subchapter 2D at Sections .1301, .1302, .1303, .1304, .1305.

EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will

<sup>1</sup> In the table of North Carolina regulations federally-approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as "Subchapter 2D Air Pollution Control Requirements."

be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

### III. Final Action

EPA is taking final action to approve the above-referenced changes to the State of North Carolina SIP because they are consistent with the CAA.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Carbon monoxide, Sulfur dioxide, Particulate Matter, Lead, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

#### Subpart II—North Carolina

- 2. Amend § 52.1770(c)(1), under "Subchapter 2D Air Pollution Control Requirements" by:

- a. Revising the entries for "Section .0101", "Section .0103", "Section .0104", "Section .0105", "Section .0201", "Section .0202", "Section .0302", "Section .0303", "Section .0304", "Section .0305", "Section .0306", "Section .0307", "Section .0401", "Section .0402", "Section .0404", "Section .0407", "Section .0408", "Section .0409", and "Section .0410", and

- b. Removing the heading "Section .1300 Oxygenated Gasoline Standard" including the entries "Section .1301" through "Section .1305".

The revisions reads as follows:

#### § 52.1770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

### (1) EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .0100 Definitions and References</b>				
Section .0101 .....	Definitions .....	1/1/2018	4/10/2019 [Insert Federal Register citation].	

<sup>2</sup> See 62 FR 27968 (May 22, 1997).

## (1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section .0103 .....	Copies of Referenced Federal Regulations.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0104 .....	Incorporation by Reference .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0105 .....	Mailing List .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
<b>Section .0200 Air Pollution Sources</b>				
Section .0201 .....	Classification of Air Pollution Sources.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0202 .....	Registration of Air Pollution Sources.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
<b>Section .0300 Air Pollution Emergencies</b>				
* .....	* .....	* .....	* .....	* .....
Section .0302 .....	Episode Criteria .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0303 .....	Emission Reduction Plans .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0304 .....	Preplanned Abatement Program	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0305 .....	Emission Reduction Plan: Alert Level.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0306 .....	Emission Reduction Plan: Warning Level.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0307 .....	Emission Reduction Plan: Emergency Level.	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
<b>Section .0400 Ambient Air Quality Standards</b>				
Section .0401 .....	Purpose .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0402 .....	Sulfur Oxides .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
* .....	* .....	* .....	* .....	* .....
Section .0404 .....	Carbon Monoxide .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
* .....	* .....	* .....	* .....	* .....
Section .0407 .....	Nitrogen Dioxide .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0408 .....	Lead .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0409 .....	PM <sub>10</sub> Particulate Matter .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
Section .0410 .....	PM <sub>2.5</sub> Particulate Matter .....	1/1/2018	4/10/2019 [Insert <b>Federal Register</b> citation].	<b>Federal Reg-</b>
* .....	* .....	* .....	* .....	* .....

\* \* \* \* \*

[FR Doc. 2019-06734 Filed 4-9-19; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[EPA-HQ-SFUND-2002-0008; FRL-9991-99-Region 8]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of OU2 of the Libby Asbestos Superfund Site****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Operable Unit 2 (OU2), Former Screening Plant, of the Libby Asbestos Superfund Site (Site) located in Libby, Montana from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to all of OU2. Operable Unit 1 (OU1), Former Export Plant; Operable Unit 3 (OU3), Former Vermiculite Mine; Operable Unit 4 and Operable Unit 7 (OU4/OU7), Residential/Commercial Properties of Libby and Troy; Operable Unit 5 (OU5), Former Stimson Lumber Mill; Operable Unit 6 (OU6), BNSF Rail Corridor; and Operable Unit 8 (OU8), Highways and Roadways, are not being considered for deletion as part of this action and will remain on the NPL. The EPA and the State of Montana, through the Department of Environmental Quality (DEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, and five-year reviews, have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

**DATES:** This action is effective April 10, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-HQ-SFUND-2002-0008. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically in <https://www.regulations.gov>; by calling EPA Region 8 at (303) 312-7279 and leaving a message; and at the EPA Info Center, 108 E 9th Street, Libby, MT 59923, (406) 293-6194, Monday through Thursday from 8:00 a.m.–4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Dania Zinner, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-7122, email [zinner.dania@epa.gov](mailto:zinner.dania@epa.gov).

**SUPPLEMENTARY INFORMATION:** The portion of the site to be deleted from the NPL is: OU2 of the Libby Asbestos Superfund Site in Libby, Montana. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (84 FR 2122-2125) on February 6, 2019.

The closing date for comments on the Notice of Intent for Partial Deletion was March 8, 2019. One set of public comments was received. The commenter does not object to the delisting; however, the commenter would like the Operations and Maintenance plan to be reviewed and updated. EPA commits to revising and updating the Operation and Maintenance plan for OU2 when new information necessitates an update. EPA activities completed at the site satisfy the NCP deletion criteria. EPA believes the partial deletion of OU2 of the Libby Asbestos Superfund Site from the NPL is appropriate. A responsiveness summary was prepared and placed in both the docket, EPA-HQ-SFUND-2002-0008, on [www.regulations.gov](https://www.regulations.gov), and in the local repositories listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 29, 2019.

**Douglas H. Benevento,**  
*Regional Administrator, Region 8.*

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(d); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. In Appendix B to part 300, Table 1 is amended by revising the entry for “MT”, “Libby Asbestos”, “Libby” to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>a</sup>
MT .....	Libby Asbestos .....	Libby .....	P

a \* \* \*  
\* P = Sites with partial deletion(s).

[FR Doc. 2019-07019 Filed 4-9-19; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****42 CFR Part 59**

RIN 0937-AA07

**Compliance With Statutory Program Integrity Requirements**

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, HHS. Department of Health and Human Services.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the provisions that appeared in the final rule published in

the **Federal Register** on March 4, 2019 titled “*Compliance with Statutory Program Integrity Requirements*”.

**DATES:** These corrections are effective on May 3, 2019.

**FOR FURTHER INFORMATION CONTACT:** The Office of the Assistant Secretary for Health (OASH) at (202) 690-7694, [ASH@hhs.gov](mailto:ASH@hhs.gov), or by mail at 200 Independence Avenue SW, Washington, DC 20201.

#### SUPPLEMENTARY INFORMATION:

### I. Background

In FR Doc. No. 2019-03461 of March 4, 2019 (84 FR 7714 through 7791), there were several technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published March 4, 2019.

### II. Summary of Errors

Due to a technical error, on page 7714, in the 1st column, line 5, the Department inadvertently included an incorrect RIN number. The Department is correcting this error by inserting the correct RIN number.

Due to a technical error, on page 7787, in the 1st column, line 4, the Department included an extra comma after “award” and omitted a comma after “grantee.” The Department is correcting this error by removing the comma in the one instance and adding a comma in the other instance.

Due to a technical error, on page 7787, in the 2nd column, line 25 and the 3rd column, line 1, the Department included quotation marks around “low income family.” In the first instance, also due to a technical error, the Department capitalized “low.” The Department is correcting these errors by removing the quotation marks in both instances and replacing the capital “L” with a lower case “l” in the first instance.

Due to a technical error, on page 7789, in the 3rd column, line 23, the Department simply described “section 1008 of the Act . . .” without specifying “Public Health Service.” The Department is correcting this error by clarifying “section 1008 of the Public Health Service Act . . .”

Due to a technical error, on page 7791, in the 2nd column, lines 6 and 15, the Department included unnecessary commas. The Department is correcting this error by removing these commas.

Due to a technical error, on page 7791, in the 3rd column, line 10, the Department inadvertently included a reference to a subsection “gg” regarding

§ 59.18. The Department is correcting this error by removing the incorrect subsection (gg) notation regarding § 59.18.

### III. Waiver of Proposed Rulemaking

The Department will ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, the Department can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The Department finds it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the regulations. Therefore, the Department finds good cause to waive notice and comment procedures.

### IV. Correction of Errors

In FR Rule Doc. No. 2019-03461 of March 4, 2019 (84 FR 7714 through 7791), the following correction to the preamble is made:

1. On page 7714, in the 1st column, line 5, the Department is correcting the RIN number “0937-ZA00” to read “0937-AA07.”

In FR Rule Doc. No. 2019-03461 of March 4, 2019 (84 FR 7714 through 7791), the following corrections to 42 CFR part 59 are made:

#### § 59.1 [Corrected]

■ 1. On page 7787, in the 1st column, line 4, amend § 59.1 in the second sentence of paragraph (b) by correcting the phrase “To this extent, the use of the terms “grant”, “award”, “grantee” and “subrecipient” in applicable regulations of this subpart” to read, “To this extent, the use of the terms “grant”, “award”, “grantee”, and “subrecipient” in applicable regulations of this subpart.”

#### § 59.2 [Corrected]

■ 2. On page 7787, beginning in the 2nd column, in § 59.2, amend the definition of “Low income family”:

■ a. In the second sentence of the introductory text by correcting the phrase “The project director may find that “Low income family” also includes members” to read “The project director may find that low income family also includes members”; and

■ b. In the third sentence of paragraph (2) by correcting the phrase “The project director may, for the purpose of considering whether the woman is from a “low income family”” to read “The project director may, for the purpose of considering whether the woman is from a low income family”.

#### § 59.15 [Corrected]

■ 3. On page 7789, in the 3rd column, amend the first sentence of the introductory text to § 59.15 by correcting the phrase “A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act” to read “A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Public Health Service Act”.

■ 4. On page 7791, in the 2nd and 3rd columns, amend § 59.19 by correcting the first sentences of paragraphs (a), (b), and (c) to read as follows:

#### § 59.19 Transition provisions; compliance.

(a) \* \* \* The date by which covered entities must comply with the physical separation requirements contained in § 59.15 is March 4, 2020. \* \* \*

(b) \* \* \* The date by which covered entities must comply with § 59.7 and 59.5(a)(13) (as it applies to grant applications) is the date on which competitive or continuation award applications are due, where that date occurs after July 2, 2019.

(c) \* \* \* The date by which covered entities must comply with §§ 59.5(a)(12), 59.5(a)(13) (as it applies to all required reports), 59.5(a)(14), (b)(1) and (8), 59.13, 59.14, 59.17, and 59.18 is July 2, 2019.

Dated: April 2, 2019.

**Ann C. Agnew,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2019-06971 Filed 4-9-19; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 180816767–9270–02]

RIN 0648–BI44

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Air Force Launches and Operations at Vandenberg Air Force Base, California**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; issuance of Letters of Authorization (LOA).

**SUMMARY:** NMFS, upon request of the U.S. Air Force (USAF), hereby issues regulations to govern the unintentional taking of marine mammals incidental to launching space launch vehicles, intercontinental ballistic and small missiles, and aircraft operations at Vandenberg Air Force Base (VAFB), over the course of five years. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking. In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby additionally given that a five-year LOA has been issued to USAF to take marine mammals incidental to rocket and missile launch and recovery activities and aircraft operations.

**DATES:** Effective from April 10, 2019, until April 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Jordan Carduner, Office of Protected Resources, NMFS; phone: (301) 427–8401.

**SUPPLEMENTARY INFORMATION:****Availability**

A copy of the USAF's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act](http://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act). In case

of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

**Purpose and Need for Regulatory Action**

These regulations establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to rocket and missile launch activities and aircraft operations at VAFB.

We received an application from the USAF requesting five-year regulations and authorization to take marine mammals. Take is expected to occur by Level B harassment incidental to launch noise and sonic booms. Please see “Background” below for definitions of harassment.

**Legal Authority for the Action**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the *Mitigation* section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, the regulations contain mitigation, monitoring, and reporting requirements.

**Summary of Major Provisions Within the Rule**

Following is a summary of the major provisions of the regulations regarding USAF rocket and missile launch activities and aircraft operations. These measures include:

- Required acoustic monitoring to measure the sound levels associated with the planned activities.
- Required biological monitoring to record the presence of marine mammals during the planned activities and to document responses to the planned activities.

- Mitigation measures to minimize harassment of the most sensitive marine mammal species.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**Summary of Request**

On August 10, 2018, NMFS received an application from the USAF, 30th Space Wing, requesting authorization for the take of six species of pinnipeds incidental to rocket launch and recovery, missile launch, and aircraft operations from VAFB launch complexes. On September 13, 2018 (83 FR 46483), we published a notice of receipt of the USAF's application in the **Federal Register**, requesting comments

and information related to the request for thirty days. We received comments from the Marine Mammal Commission and from the general public. On December 4, 2018, NMFS received a supplement to the application from USAF that included a request to also include activities associated with the recovery of Space Exploration Technologies (SpaceX) Falcon 9 First Stage rockets. On January 24, 2019 (50 FR 217) NMFS published a notice of proposed rule in the **Federal Register**, with a thirty day comment period, requesting public comments and information related to the request. We received comments from the Marine Mammal Commission and from the general public. Comments received in response to the September 13 notice of receipt and the January 24 proposed rule were considered in development of these final regulations to govern the authorization of take incidental to the activities encompassed in the final application. The comments are available online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

The take of marine mammals incidental to activities related to the launching of space launch vehicles and missiles, and aircraft operations at VAFB, have been previously authorized by NMFS via Letters of Authorization (LOA) issued under incidental take regulations, which were effective from March 26, 2014 through March 26, 2019 (79 FR 10016). We note that while the previous rule and LOA expired on March 26, 2019, no activities that are expected to result in the incidental take of marine mammals, including the launching of rockets and missiles from VAFB, are planned to occur from March 26, 2019 until these regulations are effective and a new LOA is issued.

To date, we have issued nine LOAs to USAF for these activities. Launches of SpaceX's Falcon 9 rocket were included in the previous five-year rule (79 FR 10016) and LOA issued to USAF for activities at VAFB. At the time those regulations and LOA were issued, the recovery of the Falcon 9 First Stage (including in-air boost-back and landing) was not yet part of SpaceX's action, therefore recovery of the Falcon 9 First Stage was not included in that rule and LOA. In 2016, when SpaceX began recovery operations involving the Falcon 9 First Stage, SpaceX requested authorization for the take of marine mammals incidental to those recovery activities. NMFS issued incidental harassment authorizations (IHA) pursuant to section 101(a)(5)(d) of the MMPA in 2016 (81 FR 34984) and 2017

(82 FR 60954) to SpaceX, which authorized the take of marine mammals incidental to Falcon 9 First Stage recovery activities. The USAF and SpaceX requested that Falcon 9 First Stage recovery activities as well as launches of the Falcon 9 First Stage be included in these regulations. NMFS has determined it is more efficient to include both Falcon 9 First Stage recovery activities and launches in the same regulations, and that this is allowable as Falcon 9 First Stage recovery activities fall within the scope of the action as all activities resulting in take of marine mammals originate at VAFB. Therefore, both recoveries and launches of the Falcon 9 First Stage have been included in these regulations.

#### Authorization

This action also serves as a notice of issuance of a five-year LOA issued to USAF authorizing the take of marine mammals, by Level B harassment, incidental to rocket launch and recovery activities, missile launch activities and aircraft operations. The level and type of take authorized by the LOA is outlined in this preamble to the final rule. Take by mortality, serious injury or Level A harassment is not anticipated or authorized.

#### Description of the Specified Activity

##### Overview

VAFB contains seven active missile launch facilities and six active space launch facilities and supports launch activities for the USAF, Department of Defense, National Aeronautics and Space Administration (NASA), and commercial entities. It is the primary west coast launch facility for placing commercial, government and military satellites into polar orbit on unmanned launch vehicles, and for the testing and evaluation of intercontinental ballistic missiles (ICBMs) and sub-orbital target and interceptor missiles. In addition to the launching of rockets, certain rocket components are returned to VAFB for reuse, using in-air "boost-back" maneuvers and landings at the base. In addition to space vehicle and missile launch activities at VAFB, occasional helicopter and aircraft operations occur at VAFB that involve search-and-rescue, delivery of space vehicle components, launch mission support, security reconnaissance, and training flights. The use of unmanned aerial systems (UAS, also known as "drones") also occurs at VAFB.

The USAF anticipates that no more than 110 rocket launches and 15 missile launches would occur in any year during the period of authorized

activities (Table 1). This number of launches would represent an increase compared to historical launch activity at VAFB, but the USAF anticipates an increase in the number of launches in the near future and has based their estimate of planned rocket launches on this anticipated increase.

There are six species of marine mammals that may be affected by the USAF's planned activities: California sea lion, Steller sea lion, northern fur seal, Guadalupe fur seal, northern elephant seal, and harbor seal. Hauled out pinnipeds may be disturbed by launch noises and/or sonic booms (overpressure of high-energy impulsive sound) from launch vehicles. Aircraft that are noisy and/or flying at low altitudes can also have the potential to disturb hauled out pinnipeds. Pinniped responses to these stimuli have been monitored at VAFB for the past 25 years.

##### Dates and Duration

The activities planned by USAF would occur for five years, from April, 2019 through April, 2024. Activities would occur year-round throughout the period of validity for the rule.

##### Specified Geographical Region

All launches and aircraft activities would occur at VAFB. The areas potentially affected by noise from these activities includes VAFB and the Northern Channel Islands (NCI). VAFB occupies approximately 99,100 acres of land and approximately 42 miles of coastline in central Santa Barbara County, California and is divided by the Santa Ynez River and State Highway 246 into two distinct parts: North Base and South Base. The NCI are considered part of the project area for the purposes of this rule, as rocket launches and landings at VAFB may result in sonic booms that impact the NCI. The NCI are four islands (San Miguel, Santa Rosa, Santa Cruz, and Anacapa) located approximately 31 mi (50 km) south of Point Conception, which is located on the mainland approximately 4 mi (6.5 km) south of the southern border of VAFB. The closest part of the NCI (Harris Point on San Miguel Island) is located more than 30 nautical miles south-southeast of the nearest launch facility.

Rocket and missile launches occur from several locations on VAFB, on both North Base and South Base. Please refer to Figure 2 and Figure 3 in the USAF's application for a depiction of launch locations on VAFB. Rocket landings by SpaceX would occur at the landing area referred to as Space Launch Complex (SLC) 4W, located on South Base of



VAFB, approximately 0.5 miles (mi) (0.8 kilometers (km)) inland from the Pacific Ocean. Although SLC-4W is the preferred landing location for the Falcon 9 First Stage, SpaceX has identified two contingency landing locations should it not be feasible to land the First Stage at SLC-4W. The first contingency landing location is on a barge located at least 27 nautical miles (nm) (50 km) offshore of VAFB. The second contingency landing location is on a barge within the Iridium Landing Area, an approximately 12,800 square mile (mi<sup>2</sup>) (33,153 square kilometers (km<sup>2</sup>)) area located approximately 122 nm (225 km) southwest of San Nicolas Island (SNI) and 133 nm (245 km) southwest of San Clemente Island. As any landings of the Falcon 9 First Stage at either contingency landing location would occur on barges operated by SpaceX, no search operation would be required following a landing at either of the contingency landing locations.

#### Detailed Description of Activities

As described above, the USAF requested incidental take regulations for its operations at VAFB, which include rocket and missile launches, rocket recovery activities, and aircraft operations. VAFB is headquarters to the

30th Space Wing, the Air Force Space Command unit that operates VAFB and the Western Range. VAFB operates as a missile test base and aerospace center, supporting west coast space launch activities for the USAF, Department of Defense, NASA, and commercial contractors. VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (unmanned) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launch activities at VAFB, aircraft operations are undertaken for purposes such as search-and-rescue, delivery of space vehicle components, launch mission support, security reconnaissance, and training flights. From VAFB, space vehicles are launched into polar orbits on azimuths from 147 to 201 degrees, with sub-orbital flights to 281 degrees. Missile launches are directed west toward Kwajalein Atoll in the Pacific. This over-water sector, from 147 to 281 degrees, comprises the Western Range. Part of the Western Range encompasses the NCI.

#### Rocket Launch Activities

There are currently six active facilities at VAFB used to launch satellites into polar orbit. One existing launch facility (TP-01), on north VAFB, has not been used in several years but is being reactivated. These facilities support launch programs for the Atlas V, Delta II, Delta IV, Falcon 9 and Minotaur rockets. Various booster and fuel packages can be configured to accommodate payloads of different sizes and weights.

Table 1 shows estimates of the numbers and sizes of rocket launches from VAFB during calendar years 2019 through 2024. The numbers of anticipated launches shown in Table 1 are higher than the historical number of launches that have occurred from VAFB, and are considered conservative estimates; the actual number of launches that occurs in these years may be lower. However, the USAF anticipates an increase in the number of launches by non-commercial entities from VAFB over the next 5 years, and the numbers shown in Table 1 are based on this expectation. A large percentage of this anticipated increase will be comprised of smaller launch payloads and rockets than previously utilized at VAFB.

TABLE 1—PREDICTED MAXIMUM NUMBER OF ROCKET LAUNCHES IN CALENDAR YEARS 2019 THROUGH 2024 FROM VAFB

	2019	2020	2021	2022	2023	2024 *
Small rockets .....	5	10	25	40	50	60
Medium rockets .....	10	15	20	20	30	30
Large rockets .....	5	5	10	15	20	20
Total launches .....	20	30	45	75	100	110

\* This rule is valid for only approximately 3 months in 2024 therefore not all launches in 2024 are covered under the rule.

Rocket launches from VAFB have the potential to result in the harassment of pinnipeds that are hauled out of the water as a result of exposure to sound from launch noise (on VAFB) or as a result of exposure to sound from sonic booms. Based on several years of monitoring data, harassment of marine mammals is unlikely to occur when the intensity of a sonic boom is below 1.0 pounds per square foot (psf) (see further discussion in the Estimated Take

section below). The likelihood of a sonic boom with a measured psf above 1.0 impacting marine mammals on the NCI is dependent on the size of the rocket (*i.e.*, larger rockets are more likely to result in a sonic boom on the NCI than smaller rockets). The USAF estimated 33 percent of large rockets, 25 percent of medium sized rockets, and 10 percent of small sized rockets would result in sonic booms on the NCI (USAF, 2018).

Table 2 shows types of rockets that are anticipated for launch from VAFB over the next 5 years and the nearest locations of pinniped haulouts to the launch locations for those rockets. Other small rockets may also be launched from VAFB over the next 5 years but the exact specifications and launch locations for those rockets are unknown at this time.

TABLE 2—ROCKET TYPES LAUNCHED FROM VAFB AND NEAREST LOCATIONS OF PINNIPED HAULOUTS TO LAUNCH LOCATIONS

Rocket	Launch facility	Nearest pinniped haulout	Distance to haulout (km)
Current launch programs:			
Atlas V .....	SLC-3E .....	North Rocky Point .....	9.9
Delta II <sup>1</sup> .....	SLC-2W .....	Purisima Point .....	2.3

TABLE 2—ROCKET TYPES LAUNCHED FROM VAFB AND NEAREST LOCATIONS OF PINNIPED HAULOUTS TO LAUNCH LOCATIONS—Continued

Rocket	Launch facility	Nearest pinniped haulout	Distance to haulout (km)
Delta IV .....	SLC-6 .....	North Rocky Point .....	2.3
Falcon 9 .....	SLC-4E .....	North Rocky Point .....	8.2
Minotaur .....	SLC-8 .....	North Rocky Point .....	1.6
Minotaur/Taurus .....	LF-576E .....	North Spur Road .....	0.8
Future launch programs: <sup>2</sup>			
Vector .....	SLC-8 .....	North Rocky Point .....	1.6
Firefly .....	SLC-2 .....	Purísima Point .....	2.3
New Glenn .....	TBD .....	TBD .....	TBD
Vulcan .....	SLC-3E .....	North Rocky Point .....	9.9
TBD .....	TP-01 .....	Purísima Point .....	7.6

<sup>1</sup> The final launch of the Delta II rocket occurred in September 2018. However a new corporate entity has proposed to reutilize SLC-2W.

<sup>2</sup> All future launch program specifications should be considered notional and subject to change.

As described above, launch facilities at VAFB support launch programs for rockets including the Atlas V, Delta II, Delta IV, Falcon 9, Minotaur, and Taurus rockets. A detailed description of these vehicle types was provided in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and thus are not repeated here. No changes have been made to the space vehicle types described therein.

#### *SpaceX Falcon 9 First Stage Recovery Activities*

The Falcon 9 is a two-stage rocket designed and manufactured by SpaceX for transport of satellites into orbit. The First Stage of the Falcon 9 is designed to be reusable, while the second stage is not reusable. The action includes up to twelve Falcon 9 First Stage recoveries per year. The Falcon 9 First Stage is recovered via an in-air boost-back maneuver and landings at VAFB or at a contingency landing location offshore. During the First Stage's descent, a sonic boom would be generated when the First Stage reaches a rate of travel that exceeds the speed of sound. Sonic booms would occur in proximity to the landing area with the highest sound levels generated from sonic booms generally focused in the direction of the landing area, and may be heard during or briefly after the boost-back and landing, depending on the location of the receiver. The boost-back and landing of the Falcon 9 First Stage may also result in a sonic boom impacting the NCI or VAFB (USAF, 2018). A detailed description of the Falcon 9 First Stage and the related boost-back and landing procedure was provided in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and thus is not repeated here. No changes have been

made to the Falcon 9 First Stage or its boost-back and landing procedure described therein. These sonic booms may result in the take of marine mammals. This is discussed further in the *Estimated Take* section below. The Falcon 9 First Stage is the only rocket type that may be recovered via boost-back and landing as part of the planned activities.

#### *Missile Launch Activities*

A variety of small missiles are launched from various facilities on north VAFB, including Minuteman III, an ICBM which is launched from underground silos. In addition, several types of interceptor and target vehicles are launched for the Missile Defense Agency (MDA). The MDA develops various systems and elements, including the Ballistic Missile Defense System (BMDS). USAF anticipates no more than 15 missile launches would occur in any year between 2019 through 2024. Take of marine mammals at VAFB from rocket launches may occur as a result of the USAF's activities. The trajectories of all missile launches are nearly due westward; thus, they do not cause sonic boom impacts on the NCI. Therefore take of marine mammals on the NCI from missile launches is not an expected outcome of the specified activities. A detailed description of missile launch activities was provided in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and is not repeated here. No changes have been made to missile launch activities described therein.

#### *Aircraft Operations*

The VAFB airfield, located on north VAFB, supports various aircraft operations. Aircraft operations include

tower operations, such as take-offs and landings (training operations), and range operations such as overflights and flight tests. Over the past five years, an average of slightly more than 600 flights has occurred each year. Fixed-wing aircraft use VAFB for various purposes, including delivering rocket or missile components, high-altitude launches of space vehicles, and emergency landings. Helicopter operations also occur at VAFB, but the number of helicopter operations at VAFB has decreased considerably since 2008 when the deactivation of the VAFB helicopter squadron occurred. Take of hauled out pinnipeds from fixed-wing and helicopter operations are not anticipated as flight paths are required to avoid haulouts when possible and pinnipeds that haulout at VAFB are acclimatized to aircraft and helicopter overflights. A detailed description of fixed-wing and helicopter activities was provided in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and is not repeated here. No changes have been made to fixed-wing and helicopter activities described therein.

UAS operations at VAFB represent a relatively new activity but may increase over the next five years. UAS operations may include either rotary or fixed wing aircraft. These are typically divided into as many as six classes which graduate in size from class 0 (which are often smaller than 5 inches in diameter and always weigh less than one pound) to Class 5 (which can be as large as a small piloted aircraft) (Table 4). UAS classes 0, 1, 2 and 3 can be used in almost any location, while classes 4 and 5 typically require a runway and, for that reason, would only be operated from the VAFB airfield.

TABLE 4—CLASSES OF UNMANNED AERIAL SYSTEMS

Class	Weight (pounds)	Minimum dimension	Maximum dimension	Typical operating altitude (feet)	Typical airspeed (knots)
0 .....	<1	"large insect" .....	50 cm .....	any .....	any.
1 .....	1–20	>50 cm .....	2 meters .....	<1,200 .....	<100.
2 .....	21–55	>2 m .....	10 meters .....	<3,500 .....	<250.
3 .....	<1,320	>10 meters .....	n/a .....	<18,000 .....	<250.
4 .....	>1,320	>10 meters .....	n/a .....	<18,000 .....	Any.
5 .....	>1,320	>10 meters .....	n/a .....	<18,000 .....	Any.

Because UAS overflights represent a new activity at VAFB, UAS flight paths may be lower, and pinnipeds are not acclimatized to stimuli associated with UAS. Take of hauled out pinnipeds may occur as a result of visual or auditory stimuli from UAS in limited instances where the aircraft operate at low altitudes near pinniped haulouts. While harassment of hauled out pinnipeds from Class 0, 1 or 2 UAS is unlikely to occur at altitudes of 200 feet and above (Erbe *et al.*, 2017; Pomeroy *et al.*, 2015; Sweeney *et al.*, 2016; Sweeney and Gelatt, 2017), information on pinniped responses to larger UASs is not widely available. However, based on the specifications of Class 3, 4 and 5 UASs (Table 4), the likelihood of harassment resulting from overflights by UASs of that size would likely depend on several factors including noise signature and means of propulsion (*i.e.*, rocket propelled or engine propelled). Except for take-off and landing actions, a minimum altitude of 300 feet will be maintained for Class 0–2 UAS over all known marine mammal haulouts when marine mammals are present. Class 3 UAS will maintain a minimum altitude of 500 feet, except at take-off and landing. No Class 4 or 5 UAS will be flown below 1,000 feet over haulouts. The USAF anticipates that take of marine mammals from UAS operations would be minimal. However, to be conservative, the USAF has requested authorization for incidental take as a result of UAS operations.

#### Comments and Responses

We published a Notice of Proposed Rulemaking in the **Federal Register** on January 24, 2019 (84 FR 341). During the 30-day comment period, we received a comment letter from the Marine Mammal Commission (Commission) and comments from the general public. The comments and our responses are described below. For full detail of the comments and recommendations, please see the comment letters, which are available online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-)

*take-authorizations-military-readiness-activities.*

*Comment:* The Commission recommended that NMFS require the USAF to use time-lapse cameras and video-recording devices that have night-vision capabilities to document responses of pinnipeds to nighttime launches and recoveries.

*Response:* The USAF uses marine mammal observers on the NCI to observe and document pinniped responses to the USAF's activities. On VAFB, observers are not able to be physically present to document pinniped responses during launch activities due to safety concerns. NMFS has included a monitoring requirement that the USAF use camera and video recorders with night-vision capabilities on VAFB to observe and document pinniped responses when feasible. However, there are numerous practicability concerns that preclude NMFS from requiring USAF to use this particular type of equipment in all circumstances. These practicability concerns include: The distance from observation point to pinniped haulout locations on VAFB often exceeds 100 m, rendering video and still cameras not useful; infrared cameras are not viable at distances greater than approximately 10 m; and pinnipeds will often move from one portion of the beach to another after the camera has been set up, rendering the camera or video useless in recording pinniped behavior. In addition, there are numerous weather-related factors that can render video and still cameras useless, such as condensation inside the camera housing or precipitation outside the camera housing, fog and rain which can obscure the imagery, and wind which can knock over tripods. Finally, we are reluctant to include a monitoring requirement that may have the unintended result of requiring marine mammal observers to approach pinnipeds close enough to set up a camera such that the observation itself results in marine mammal harassment.

*Comment:* A member of the public expressed concern that the USAF's activity could disrupt breeding, promote abandonment of pups, cause exhaustion

from abandoning haulouts, and possibly cause hearing loss amongst seals, and commented that the potential effects on Guadalupe fur seals warrant an environmental assessment (EA).

*Response:* As described in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019), over 20 years of monitoring data support our determination that no disruption of breeding, pupping, abandonment of haulouts, or hearing loss among any species is expected. We do not expect, nor do we authorize, Level A harassment, serious injury or mortality as a result of the USAF's activities. Regarding the level of NEPA analysis warranted for our action, NMFS' action is limited to the authorization of take incidental to the USAF's activities. We have determined that this action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the action qualifies to be categorically excluded from further NEPA review.

*Comment:* A member of the general public commented that measures such as studying migration routes and adjusting scheduling for low-population seasons, or relocating VAFB operations further inland, should be taken before considering the take of marine mammals.

*Response:* As described in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and below, the USAF's activities occur year-round, but we have included mitigation measures to avoid potential impacts, when feasible, during times when pups are more likely to be present (see the Mitigation section, below). NMFS does not have jurisdiction over the location of launch or landing facilities at VAFB.

*Comment:* A member of the general public commented that VAFB and the surrounding areas, which provides

unoccupied and largely undisturbed habitat for pinnipeds, could become unsuitable to threatened and endangered marine mammals because of significant interference from sonic booms and other disturbances from the activities of VAFB and recommended that NMFS should prepare an EA or EIS.

**Response:** As described in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and below, over 20 years of monitoring data support our determination that marine mammal habitat is not expected to be negatively impacted by the USAF's activities. The USAF has reported increasing numbers of several species on VAFB, including California sea lions and northern elephant seals which began pupping on VAFB for the first time in 2017. The fact that pinniped numbers are increasing on VAFB indicates that these species are not abandoning haulouts and rookeries and that haulout and rookery habitat is not becoming unsuitable for these species as a result of the USAF's activities, which have been ongoing for over 30 years. With regard to the request for an EA or EIS, as described in our response to the previous comment, NMFS' action is limited to the authorization of take incidental to the USAF's activities. We have determined that this action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

**Comment:** A member of the public commented that abundance of marine mammals in the area are already declining and this authorization would continue that trend.

**Response:** As described in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and below, the USAF has reported increasing numbers of several species on VAFB, including California sea lions and northern elephant seals which began pupping on VAFB for the first time in 2017. The authorization of incidental take to the USAF is not expected to result in Level A harassment, serious injury or mortality and no adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects) are anticipated for any marine mammal species as a result of the take authorized.

**Comment:** A member of the general public expressed concern about the

impacts of military testing on animals and humans in general and expressed concern that not all concerned citizens are made aware of the availability of the Notice of Proposed Rule for public comment.

**Response:** This rule only applies to the USAF's planned activities at VAFB and not other military testing activities. As described in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and below, the authorization of incidental take to the USAF is not expected to result in Level A harassment, serious injury, or mortality and no adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects) are anticipated for any marine mammal species as a result of the take authorized. NMFS has no jurisdiction on potential human health effects from military testing. We notified the public of the availability of our Notice of Proposed Rulemaking as required by law via the NMFS website ([www.fisheries.noaa.gov](http://www.fisheries.noaa.gov)), via the **Federal Register** (84 FR 341; January 24, 2019) and online at [www.regulations.gov](http://www.regulations.gov).

#### **Description of Marine Mammals in the Area of Specified Activities**

There are six marine mammal species with expected occurrence in the project area (including at VAFB, on the NCI, and in the waters surrounding VAFB and the NCI) that are expected to be affected by the specified activities. These are listed in Table 5. This section provides summary information regarding local occurrence of these species. We have reviewed USAF's species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of the USAF's application, as well as to NMFS' Stock Assessment Reports (SAR; <https://www.fisheries.noaa.gov/topic/population-assessments#marine-mammals>), rather than reprinting all of the information here. Additional general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>). Information describing two designated unusual mortality events for California sea lions and Guadalupe fur seals has been added to this section since the proposed rule was published. However, as described in the Negligible Impact Analysis and Determination section below, the information does not change our analysis or final determinations.

There are an additional 28 species of cetaceans with expected or possible

occurrence in the project area. However, we have determined that the only potential stressors associated with the specified activities that could result in take of marine mammals (*i.e.*, launch noise, sonic booms and aircraft operations) only have the potential to result in harassment of marine mammals that are hauled out of the water. Therefore, we have concluded that the likelihood of the planned activities resulting in the harassment of any cetacean to be so low as to be discountable. As we have concluded that the likelihood of any cetacean being taken incidentally as a result of USAF's planned activities to be so low as to be discountable, cetaceans are not considered further in this rule.

Table 5 lists all species with expected potential for occurrence in the vicinity of the project during the project timeframe that are likely to be affected by the specified activities, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (*e.g.*, Carretta *et al.*, 2018; Muto *et al.*, 2018). All values presented in Table 5 are the most recent available at the time of publication and are available in the 2017 SARs (Carretta *et al.*, 2018; Muto *et al.*, 2018) and draft 2018 SARs (available online at: <https://www.fisheries.noaa.gov/topic/population-assessments#marine-mammals>).

TABLE 5—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA THAT MAY BE AFFECTED BY THE USAF'S ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
<b>Order Carnivora—Superfamily Pinnipedia</b>						
Family Otariidae (eared seals and sea lions):						
California sea lion .....	<i>Zalophus californianus</i> .....	U.S. ....	- ; N	257,606 (n/a, 233,515, 2014)	14,011	≥197
Northern fur seal .....	<i>Callorhinus ursinus</i> .....	California .....	- ; N	14,050 (n/a, 7,524, 2013) ....	451	≥0.8
Steller sea lion .....	<i>Eumetopias jubatus</i> .....	Eastern U.S. ....	- ; N	41,638 (n/a, 41,638, 2015) ..	2,498	108
Guadalupe fur seal .....	<i>Arctocephalus philippii townsendi</i> .	Mexico .....	T/D ; Y	20,000 (n/a, 15,830, 2010) ..	542	≥3.2
Family Phocidae (earless seals):						
Pacific harbor seal .....	<i>Phoca vitulina richardii</i> .....	California .....	- ; N	30,968 (n/a, 27,348, 2012) ..	1,641	30
Northern elephant seal ...	<i>Mirounga angustirostris</i> .....	California breeding .....	- ; N	179,000 (n/a, 81,368, 2010)	4,882	4

<sup>1</sup> Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/topic/population-assessments#marine-mammals>. CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable.

<sup>3</sup> These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

All species that could potentially occur in the project area and that may be affected by the planned activities are included in Table 5. All six species (with six managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

Beginning in January 2013, elevated strandings of California sea lion pups were observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The Working Group on Marine Mammal Unusual Mortality Events determined that the ongoing stranding event meets the criteria for an Unusual Mortality Event (UME) and declared California sea lion strandings from 2013 through 2017 to be one continuous UME. The causes and mechanisms of this event remain under investigation. For more information on the UME, see: <https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california>.

Increased strandings of Guadalupe fur seals started occurring along the entire coast of California in early 2015. This event was declared a marine mammal UME. Strandings in 2015 were eight times higher than the historical average, peaking from April through June of that year, and have since declined but continue at a rate that is above average. Most stranded individuals have been

weaned pups and juveniles (1–2 years old). For more information on this ongoing UME, see: <https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2018-guadalupe-fur-seal-unusual-mortality-event-california>.

Additional detail regarding the affected species and stocks, including local occurrence data, was provided in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019) and is not repeated here.

#### Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (i.e., low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for

these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz; and
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Six species of marine mammal (four otariid and two phocid species) have the reasonable potential to co-occur with the planned activities. Please refer to Table 5.

TABLE 3—RELEVANT MARINE MAMMAL FUNCTIONAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGES

Hearing group	Generalized hearing range *
Phocid pinnipeds (PW) (underwater) (true seals) .....	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) .....	60 Hz to 39 kHz.

\* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

### Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our Notice of Proposed Rulemaking (84 FR 341; January 24, 2019). Therefore, we do not reprint the information here but refer the reader to that document. That document included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, as well as general background information on sound. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section and the material it references, the *Estimated Take* section, and the *Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

### Estimated Take

This section provides an estimate of the number of incidental takes authorized through this rule, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination. We note that the take numbers have been revised slightly since the proposed rule, as indicated within Table 11 and described immediately above it. These changes do not represent significant increases and have not resulted in any changes to our findings with respect to negligible impacts or small numbers.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sounds associated with the planned activities. Based on the nature of the activity, Level A harassment, serious injury, and mortality are neither anticipated nor authorized. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these basic factors can contribute to an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group

size). Below, we describe the factors considered here in more detail and present the take estimate.

### Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

*Level B Harassment for non-explosive sources*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20  $\mu$ Pa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20  $\mu$ Pa (rms) (Table 6).

TABLE 6—NMFS CRITERIA FOR PINNIPED HARASSMENT FROM EXPOSURE TO AIRBORNE SOUND

Species	Level B harassment threshold
Harbor seals .....	90 dB re 20 $\mu$ Pa.
All other pinniped species .....	100 dB re 20 $\mu$ Pa.

In the absence of site-specific data, NMFS typically relies on the acoustic criteria shown in Table 6 to estimate

take as a result of exposure to airborne sound. However, in this case, more than 20 years of monitoring data exists on

pinniped responses to the stimuli associated with the planned activities in the particular geographic area of the

planned activities. Therefore, we consider these data to be the best available information in regard to estimating take of pinnipeds to stimuli associated with the planned activities. These data suggest that pinniped responses to the stimuli associated with the planned activities are dependent on species and intensity of the stimuli.

The data recorded by USAF at VAFB and the NCI over the past 25 years has shown that pinniped reactions to sonic booms and launch noise vary depending on the species, the intensity of the stimulus, and the location (*i.e.*, on VAFB or the NCI). At the NCI, harbor seals have tended to react more strongly to sonic booms than most other species, with California sea lions also appearing to be somewhat more sensitive to sonic

booms than some other pinniped species (Table 7). Northern fur seals generally show little or no reaction, and northern elephant seals generally exhibit No reaction at all, except perhaps a heads-up response or some stirring, especially if sea lions in the same area mingled with the elephant seals react strongly to the boom (Table 7). No data is available on Steller sea lion or Guadalupe fur seal responses to sonic booms.

There is less data available on pinniped responses at VAFB during launches, due to limitations on real-time monitoring associated with human safety concerns, but the available data indicates that all harbor seals and California sea lions have tended to flush to the water at VAFB during launches

while 10 percent or less of northern elephant seals have flushed to the water during launch. Monitoring data also show that reactions to sonic booms tend to be insignificant below 1.0 psf and that, even above 1.0 psf, only a portion of the animals present have reacted to the sonic boom depending on the species. Lower energy sonic booms (<1.0 psf) have typically resulted in little to no behavioral responses among pinnipeds at VAFB, including head raising and briefly alerting but returning to normal behavior shortly after the stimulus (Table 7). More powerful sonic booms have sometimes resulted in some species of pinnipeds flushing from haulouts.

TABLE 7—OBSERVED PINNIPED RESPONSES TO SONIC BOOMS AT SAN MIGUEL ISLAND, BASED ON USAF LAUNCH MONITORING REPORTS

Launch event	Sonic boom level (psf)	Monitoring location	Species observed and responses
Athena II (April 27, 1999) .....	1.0	Adams Cove .....	California sea lion: 866 alerted; 232 (27%) flushed into water. Northern elephant seal: Alerted but did not flush. Northern fur seal: Alerted but did not flush.
Athena II (September 24, 1999).	0.95	Point Bennett .....	California sea lion: 12 of 600 (2%) flushed into water. Northern elephant seal: Alerted but did not flush. Northern fur seal: Alerted but did not flush.
Delta II 20 (November 20, 2000).	0.4	Point Bennett .....	California sea lion: 60 pups flushed into water; No reaction from focal group. Northern elephant seal: No reaction.
Atlas II (September 8, 2001) ...	0.75	Cardwell Point .....	California sea lion (Group 1): No reaction (1,200 animals). California sea lion (Group 2): No reaction (247 animals). Northern elephant seal: No reaction. Harbor seal: 2 of 4 flushed into water.
Delta II (February 11, 2002) ....	0.64	Point Bennett .....	California sea lions and northern fur seals: No reaction among 485 animals in 3 groups. Northern elephant seal: No reaction among 424 animals in 2 groups.
Atlas II (December 2, 2003) ....	0.88	Point Bennett .....	California sea lion: Approximately 40% alerted; several flushed to water (number unknown—night launch). Northern elephant seal: No reaction.
Delta II (July 15, 2004) .....	1.34	Adams Cove .....	California sea lion: 10% alerted (number unknown—night launch). Northern elephant seal: No reaction (109 pups).
Atlas V (March 13, 2008) .....	1.24	Cardwell Point .....	California sea lion: No reaction (784 animals).
Delta II (May 5, 2009) .....	0.76	West of Judith Rock .....	Northern elephant seal: No reaction (445 animals).
Atlas V (April 14, 2011) .....	1.01	Cuyler Harbor .....	California sea lion: No reaction (460 animals).
Atlas V (September 13, 2012)	2.10	Cardwell Point .....	Northern elephant seal: No reaction (68 animals). Harbor seal: 20 of 36 (56%) flushed into water.
Atlas V (April 3, 2014) .....	0.74	Cardwell Point .....	Harbor seal: 1 of ~25 flushed into water; no reaction from others.
Atlas V (December 12, 2014)	1.18	Point Bennett .....	Calif. sea lion: 5 of ~225 alerted; none flushed.
Atlas V (October 8, 2015) .....	1.96	East Adams Cove of Point Bennett.	Calif. sea lion: ~60% of CSL alerted and raised their heads. None flushed. Northern elephant seal: No visible response to sonic boom, none flushed. Northern fur seal: 60% alerted and raised their heads. None flushed.
Atlas V (March 1, 2017) .....	<sup>a</sup> ~0.8	Cuyler Harbor on San Miguel Island.	Northern elephant seal: 13 of 235 (6%) alerted; none flushed.

<sup>a</sup>Peak sonic boom at the monitoring site was ~2.2 psf, but was in infrasonic range—not audible to pinnipeds. Within the audible frequency spectrum, boom at monitoring site estimated at ~0.8 psf.

### Ensonified Area

The USAF is not able to predict the exact areas that will be impacted by noise associated with the specified activities, including sonic booms, launch noise and UAS-related noise. Numerous launch locations are utilized on VAFB, each of which results in different parts of the base (and different haulouts) being ensonified by noise during a launch. In addition, rocket launches by private entities on VAFB are expected to increase over the next 5 years and the USAF is not able to predict the trajectories of these future rocket launch programs. Therefore, for the purposes of estimating take, we conservatively estimate that all haulouts on VAFB will be ensonified by launch noise during a rocket or missile launch.

On the NCI, sonic booms resulting from launches sometimes impact San Miguel Island (SMI) and occasionally Santa Rosa Island (SRI). Santa Cruz and Anacapa Islands are not expected to be impacted by sonic booms in excess of 1.0 psf (USAF, 2018), therefore only marine mammals on San Miguel and Santa Rosa Islands may potentially be taken by sonic booms. We estimate that, when a sonic boom impacts the NCI, 25 percent of pinniped haulouts on SMI and SRI will be ensonified by a sonic boom above 1.0 psf. We consider this to be a conservative assumption based on sonic boom models which show that areas predicted to be impacted by a sonic boom with peak overpressures of 1.0 psf and above are typically limited to limited areas of an island, and sonic boom model results tend to overestimate actual recorded sonic booms on the NCI (pers. comm. R. Evans, USAF, to J. Carduner, NMFS OPR).

### Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Data collected from marine mammal surveys, including monthly marine mammal surveys conducted by the USAF at VAFB, as well as data collected by NMFS at NCI, represent the best available information on the occurrence of the six pinniped species expected to occur in the project area. Monthly marine mammal surveys at VAFB are conducted to document the abundance, distribution and status of pinnipeds at VAFB. When possible, these surveys are timed to coincide with the lowest afternoon tides of each month, when the greatest numbers of animals are usually hauled out. Data gathered during monthly surveys include: Species, number, general behavior, presence of

pups, age class, gender, reactions to natural or human-caused disturbances, and environmental conditions. The quality and amount of information available on pinnipeds in the project area varies depending on species; some species are surveyed regularly at VAFB and the NCI (e.g., California sea lion), while other species are surveyed less frequently (e.g., northern fur seals and Guadalupe fur seals). However, the best available data was used to estimate take numbers. Take estimates for all species are shown in Table 13.

**Harbor Seal**—Pacific harbor seals are the most common marine mammal inhabiting VAFB, congregating on several rocky haulout sites along the VAFB coastline. They also haul out, breed, and pup on isolated beaches and in coves throughout the coasts of the NCI. Data from VAFB monthly surveys for the three most recent years for which data is available (2015, 2016 and 2017) shows the mean number of harbor seals recorded monthly on VAFB during those years was 255 (CEMML 2016, 2017, 2018). The USAF estimated the number of harbor seals that may be hauled out at VAFB during all months of the year from 2019–2024 to be 300. We think this is a reasonable estimate given the monthly survey data as described above and the fluctuations in harbor seal numbers observed on VAFB. Therefore, take of harbor seals at VAFB was estimated based on a conservative estimate of 300 harbor seals hauled out during any month on VAFB. Take of harbor seals at the NCI was estimated based on the mean count totals from survey data collected on SMI, SRI, and Richardson Rock (located 10 km northwest of SMI), from 2011 to 2015 by the NMFS SWFSC (Lowry et al., 2017).

**California sea lion**—California sea lions are common offshore of VAFB and haul out on rocks and beaches along the coastline of VAFB, where their numbers have been increasing in recent years, though pupping rarely occurs on the VAFB coastline. They haul out in large numbers on the NCI and rookeries exist on SMI. The data from monthly marine mammal surveys at VAFB from 2015, 2016 and 2017 shows a mean of 11 California sea lions recorded at VAFB (CEMML 2016, 2017, 2018). However, numbers of California sea lions appear to be increasing at VAFB, with a mean of 21 recorded during surveys in 2017, including 68 recorded in September 2017 (CEMML, 2018). The USAF estimated in their application that up to 125 California sea lions may be hauled out at VAFB during any month of the year. However, based on the monthly survey data, for the purposes of estimating take, we conservatively

estimate that up to 75 California sea lions may be hauled out during any month of the year. Take of California sea lions at the NCI was estimated based on the mean monthly count totals from survey data collected on SMI, SRI, and Richardson Rock from 2011 to 2015 by the NMFS SWFSC (Lowry et al., 2017).

**Steller Sea Lion**—Steller sea lions occur in very small numbers at VAFB and on SMI. They do not currently have rookeries at VAFB or the NCI. Data from monthly marine mammal surveys at VAFB from 2015, 2016 and 2017 show a mean of 2.4 Steller sea lions recorded at VAFB (CEMML 2016, 2017, 2018). The USAF estimated the number of Steller sea lions that may be hauled out at VAFB during all months of the year from 2019–2024 to be 3. We consider this a reasonable estimate based on monthly survey data. Steller sea lions haul out in very small numbers on SMI, and comprehensive survey data for Steller sea lions in the NCI is not available. Take of Steller sea lions on the NCI was estimated based on subject matter expert input indicating that a maximum of 4 Steller sea lions have been observed on SMI at any time (pers. comm., S. Melin, NMFS Marine Mammal Laboratory (MML), to J. Carduner, NMFS OPR).

**Northern elephant seal**—Northern elephant seals haul out sporadically on rocks and beaches along the coastline of VAFB and at Point Conception and have rookeries on SMI and SRI and at one location at VAFB. Data from monthly marine mammal surveys at VAFB from 2015, 2016 and 2017 show a mean of 39.4 northern elephant seals recorded at VAFB (CEMML 2016, 2017, 2018). The USAF estimated the number of northern elephant seals that may be hauled out at VAFB during all months of the year from 2019–2024 to be 60. However, a mean of 76.3 northern elephant seals was recorded at VAFB in 2017 (CEMML, 2018), suggesting northern elephant seal numbers at VAFB may be increasing. For the purposes of estimating take on VAFB, we therefore conservatively estimate that the number of northern elephant seals that may be hauled out at VAFB during all months of the year from 2019–2024 to be 100. Take of northern elephant seals at the NCI was estimated based on the mean count totals from survey data collected on SMI, SRI, and Richardson Rock from 2011 to 2015 by the NMFS SWFSC (Lowry et al., 2017).

**Northern fur seal**—Northern fur seals have rookeries on SMI, the only island in the NCI on which they have been observed. No haulouts or rookeries exist for northern fur seals on the mainland coast, including VAFB, therefore no take



of northern fur seals is expected at VAFB. Comprehensive survey data for northern fur seals in the project area is not available. Estimated take of northern fur seals was therefore based on subject matter expert input which indicated that from June through August, the population at SMI is at its maximum, with an estimated 13,384 animals at SMI (Carretta et al., 2015), with approximately 7,000 present from September through November, and approximately 125 present from November through May (pers. comm., S. Melin, NMFS Marine Mammal Laboratory (MML) to J. Carduner, NMFS OPR).

*Guadalupe fur seal*—There are estimated to be approximately 20–25 individual Guadalupe fur seals that have fidelity to San Miguel Island (pers.

comm. S. Melin, NMFS MML, to J. Carduner, NMFS OPR). No haulouts or rookeries exist for Guadalupe fur seals on the mainland coast, including VAFB, therefore no take of Guadalupe fur seals is expected at VAFB. Survey data on Guadalupe fur seals in the project area is not available. Estimated take of Guadalupe fur seals was based on the maximum number of Guadalupe fur seals observed at any time on SMI (13) (pers. comm., J. LaBonte, ManTech SRS Technologies Inc., to J. Carduner, NMFS, Feb. 29, 2016); it was therefore conservatively assumed that 13 Guadalupe fur seals may be hauled out the NCI at any given time.

#### Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

NMFS currently uses a three-tiered scale to determine whether the response of a pinniped on land to stimuli rises to the level of behavioral harassment under the MMPA (Table 8). NMFS considers the behaviors that meet the definitions of both movements and flushes in Table 8 to qualify as behavioral harassment. Thus a pinniped on land is considered by NMFS to have been behaviorally harassed if it moves greater than two times its body length, or if the animal is already moving and changes direction and/or speed, or if the animal flushes from land into the water. Animals that become alert without such movements are not considered harassed. See Table 8 for a summary of the pinniped disturbance scale.

TABLE 8—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE ON LAND

Level	Type of response	Definition	Characterized as behavioral harassment by NMFS
1 .....	Alert .....	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.	No.
2 .....	Movement .....	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.	Yes.
3 .....	Flush .....	All retreats (flushes) to the water .....	Yes.

Take estimates were calculated separately for each stock in each year the regulations are valid (from 2019–2024), on both VAFB and the NCI, based on the number of animals assumed hauled out at each location that are expected to be behaviorally harassed by the stimuli associated with the specified activities (*i.e.*, launch, sonic boom, or UAS). First, the number of hauled out

animals per month was estimated at both VAFB and the NCI for each stock, based on survey data and subject matter expert input as described above. Then we estimated the number of hauled out animals per month that would be behaviorally harassed, by applying a correction factor to account for the likelihood that the animals would respond at a Level 2 or 3 response

(Table 8). Those correction factors differ depending on the location (*i.e.*, VAFB or the NCI) and on the reactivity of each species to the stimuli (Table 9), and are based on the best available information (in this case, several years of monitoring data on both VAFB and the NCI (Table 7)).

TABLE 9—PROPORTION OF EACH SPECIES ASSUMED TO BE HARASSED BY LAUNCH OR SONIC BOOM ON VAFB AND THE NCI

Species (stock)	Proportion of individuals assumed taken per sonic boom (NCI) (%)	Proportion of individuals assumed taken per launch (VAFB) (%)
Harbor seal (CA) .....	50	100
CA sea lion (U.S) .....	25	100
NES (CA breeding) .....	5	15
Steller Sea Lion (Eastern) .....	50	100
Northern fur seal (CA) .....	25	(n/a)
Guadalupe fur seal (Mexico) .....	50	(n/a)

At VAFB, we assume that all pinnipeds at all haulouts would be taken by Level B harassment by launch noise. This is a conservative assumption, as some haulouts are separated by several miles from launch locations, and presumably pinnipeds at haulouts further from the launch location would not react at the same rates as those located near the launch. For pinnipeds on the NCI, we conservatively assume that 25 percent of haulouts would be impacted by a sonic boom with a psf above 1.0, if such a sonic boom were to impact the NCI (not all launches result in sonic booms on the NCI). Thus, for pinnipeds on the NCI, an additional .25 correction factor was applied to the take estimate, to account for the fact that approximately 25 percent of haulouts on the NCI are expected to be impacted by a sonic boom with a psf above 1.0, if such a sonic boom were to impact the NCI. For launches on VAFB, we conservatively assume all pinnipeds will be exposed to launch noise. Take was calculated monthly, as abundance estimates for some species vary on VAFB and the NCI depending on season. The resulting numbers were then multiplied by the number of activities resulting in take (sonic booms or launches) estimated to occur in a month, and then summed to get total numbers of each stock estimated to be taken at each location per year.

Rocket launches from VAFB have the potential to result in the harassment of pinnipeds that are hauled out of the water as a result of exposure to sound from launch noise (on VAFB) or as a result of exposure to sound from sonic booms. Based on several years of monitoring data, harassment of marine mammals is unlikely to occur when the intensity of a sonic boom is below 1.0 psf (Table 7). The likelihood of a sonic boom with a measured psf above 1.0 impacting the NCI is dependent on the size of the rocket (*i.e.*, larger rockets are more likely to result in a sonic boom on the NCI than smaller rockets). The

USAF estimated 33 percent of large rockets, 25 percent of medium sized rockets, and 10 percent of small sized rockets would result in sonic booms on the NCI (USAF, 2018).

The recovery of the Falcon 9 First Stage may also result in a sonic boom impacting the NCI or VAFB (USAF, 2018). However, not all Falcon 9 First Stage recoveries are expected to result in take of marine mammals. This is because some pinnipeds that respond to a launch of a Falcon 9 First Stage recovery by moving or flushing to the water (*i.e.*, being taken) would have also responded by moving or flushing to the water in reaction to the launch of the Falcon 9 rocket that would have occurred less than 10 minutes earlier (USAF, 2018). As we do not consider an individual marine mammal to be taken more than once within a 24 hour period, those animals would not be considered taken by the Falcon 9 recovery as they had already been taken by the launch less than 10 minutes earlier.

No takes of marine mammals from Falcon 9 First Stage recoveries are expected to occur at VAFB. For harbor seals, California sea lions and Steller sea lions at VAFB, we are assuming 100 percent of individuals hauled out will be harassed by the launch of the Falcon 9 rocket. Therefore, as we do not consider an individual marine mammal to be taken more than once within a 24 hour period, those animals would not be considered taken by the Falcon 9 recovery. For northern elephant seals, we do not expect any individuals will be harassed by a Falcon 9 First Stage recovery, beyond those that are harassed by the launch of the Falcon 9 less than 10 minutes earlier, given their documented lack of responsiveness (Table 7). Northern fur seals and Guadalupe fur seals are not expected to occur on VAFB.

On the NCI, Falcon 9 First Stage recoveries may result in takes of marine mammals above and beyond the takes that occur as a result of launches of the Falcon 9 rocket. It is possible that a

sonic boom resulting from a Falcon 9 First Stage recovery may impact a different area on the NCI than the sonic boom from the launch of the rocket. When this occurs, we would assume different animals on the NCI could be taken as a result of the Falcon 9 recovery than those that were taken in a different location as a result of the sonic boom from the launch. USAF estimates that up to 12 Falcon 9 First Stage recoveries would occur per year. We conservatively estimate 33 percent (or one third) of Falcon 9 First Stage recoveries would result in a sonic boom on the NCI, thereby resulting in up to 4 sonic booms per year on the NCI, per year. This is a conservative estimate as the Falcon 9 is a medium size rocket and USAF estimates only 25 percent of medium sized rockets would result in a sonic boom. In addition, as of March 2019, no Falcon 9 First Stage recoveries have resulted in a sonic boom with a psf above 1.0 impacting the NCI. We conservatively assume 50 percent of the sonic booms resulting from the Falcon 9 First Stage recoveries would impact a different location on the NCI than the sonic boom resulting from the launch of the Falcon 9. Therefore, we conservatively estimate that two sonic booms from Falcon 9 First Stage recoveries would result in take of entirely new animals (above and beyond the takes that occurred on launch) on the NCI per year.

The estimated numbers of sonic booms impacting the NCI per year that may result in marine mammal takes from rocket launches and Falcon 9 First Stage recoveries is shown in Table 10. These numbers are based on the expected number of rocket launches (Table 1), the percentages of large, medium, and small rocket launches that would result in sonic booms on the NCI (*i.e.*, 33 percent, 25 percent, and 10 percent, respectively) (USAF, 2018), and the expected number of sonic booms resulting from Falcon 9 First Stage recoveries as described above.

TABLE 10—ESTIMATED SONIC BOOMS IMPACTING THE NCI ABOVE 1.0 psf PER YEAR EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS

Year	Estimated sonic booms per year resulting from launches expected to result in take *	Estimated sonic booms per year resulting from Falcon 9 recoveries expected to result in take	Total sonic booms per year expected to result in take on the NCI
2019 .....	5	2	7
2020 .....	* 7	2	9
2021 .....	11	2	13
2022 .....	14	2	16
2023 .....	19	2	21

TABLE 10—ESTIMATED SONIC BOOMS IMPACTING THE NCI ABOVE 1.0 psf PER YEAR EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS—Continued

Year	Estimated sonic booms per year resulting from launches expected to result in take *	Estimated sonic booms per year resulting from Falcon 9 recoveries expected to result in take	Total sonic booms per year expected to result in take on the NCI
2024 **	20	2	22

\* All numbers are calculated based on the number of each rocket size expected to be launched in that year (Table 1) and the percentages of each rocket size expected to result in a sonic boom impacting the NCI based on USAF estimates. The calculated number of sonic booms in 2020 is 6.4. However we rounded up to 7 to be conservative.

\*\* Not all sonic booms impacting the NCI in 2024 would occur during the period of validity for this rule.

For pinnipeds on VAFB, the number of launches estimated per year (Table 1) was used to estimate take in each year (*e.g.*, in 2023, the USAF expects 100 rocket and 15 missile launches will occur, thus 115 launches was used to estimate takes on VAFB in 2023). For pinnipeds on the NCI, the number of sonic booms expected to result in take (Table 10) was used to estimate take in each year (*e.g.*, in 2023, 21 sonic booms resulting in marine mammal take are expected to impact the NCI. 21 sonic booms was thus used to estimate takes on the NCI in 2023). Note that this rule is only valid for less than four months in the year 2024; thus the highest number of launches and sonic booms anticipated to occur in any single year during the period of validity for the rule would be in 2023, despite the fact that more launches are anticipated to occur in calendar year 2024.

It is possible that take of marine mammals could occur as a result of UASs, depending on noise signature and means of propulsion of the UAS. Monitoring data on pinniped responses to UAS-related stimuli is not available. The USAF estimated that 3,000

instances of harbor seal harassment and 500 instances of California sea lion harassment would occur at VAFB over the 5 years that the regulations are valid. We therefore divided those numbers (3,000 instances of harbor seal harassment and 500 instances of California sea lion harassment) by 5 to estimate the numbers of take per year and we authorize the numbers shown in Table 11.

We note that some take numbers authorized are higher than those we proposed authorizing in the Notice of Proposed Rulemaking (84 FR 341; January 24, 2019). This revision resulted from comments received from the Marine Mammal Commission, after the proposed rule was published, which recommended that we account for the potential for additional sonic booms that may occur on the NCI as a result of Falcon 9 landings. We agreed with the Commission and have included those additional sonic booms, as well as the additional takes that may occur as a result of those additional sonic booms, in the final rule. The Commission also noted following the publishing of the proposed rule that additional marine

mammals may be taken at Point Conception (on the mainland south of VAFB), above and beyond those we assumed may be taken at VAFB; we agreed with the Commission and have authorized additional takes that may occur at Point Conception. These revisions in take numbers do not represent significant increases and have not resulted in any changes to our findings with respect to negligible impacts or small numbers for any species or stocks of marine mammals.

The numbers of incidental take expected to occur on VAFB as a result of the specified activities is shown in Table 11. The numbers of incidental take expected to occur on the NCI as a result of the specified activities is shown in Table 12. The total numbers of incidental take expected to occur and authorized are shown in Table 13. The take estimates presented in Tables 11, 12 and 13 are based on the best available information on marine mammal populations in the project location and responses among marine mammals to the stimuli associated with the planned activities and are considered conservative.

TABLE 11—ESTIMATED NUMBERS OF MARINE MAMMALS TAKEN AT VAFB PER YEAR

Species (stock)	2019		2020		2021		2022		2023		2024*	
	VAFB	UAS	VAFB	UAS	VAFB	UAS	VAFB	UAS	VAFB	UAS	VAFB	UAS
Harbor seal (CA)	18,192	600	21,192	600	25,692	600	33,192	600	40,692	600	15,567	600
California sea lion (U.S.) .....	3,300	100	4,050	100	5,175	100	7,050	100	8,925	100	2,644	100
Northern elephant seal (CA breeding) .....	800	.....	950	.....	1,175	.....	1,550	.....	1,925	.....	534	.....
Steller Sea Lion (Eastern) .....	120	.....	150	.....	195	.....	270	.....	345	.....	94	.....
Northern fur seal (CA) .....	0	.....	0	.....	0	.....	0	.....	0	.....	.....	.....
Guadalupe fur seal (Mexico) .....	0	.....	0	.....	0	.....	0	.....	0	.....	.....	.....

\* Based on launches and UAS operations occurring during the period of validity for the rule (less than four months in 2024).

TABLE 12—ESTIMATED NUMBERS OF MARINE MAMMALS TAKEN ON THE NCI PER YEAR

Species (stock)	2019	2020	2021	2022	2023	2024 *
Harbor seal (CA) .....	732	941	1,360	1,674	2,197	575

TABLE 12—ESTIMATED NUMBERS OF MARINE MAMMALS TAKEN ON THE NCI PER YEAR—Continued

Species (stock)	2019	2020	2021	2022	2023	2024 *
California sea lion (U.S) .....	24,787	31,869	46,032	56,655	74,360	19,012
Northern elephant seal (CA breeding) .....	3,370	4,333	6,259	7,703	10,111	4,947
Steller Sea Lion (Eastern) .....	14	18	26	32	42	11
Northern fur seal (CA) .....	1,190	1,530	2,210	2,721	3,571	26
Guadalupe fur seal (Mexico) .....	46	59	85	104	137	36

\* Based on sonic booms occurring during the period of validity for the rule (less than four months in 2024).

TABLE 13—TOTAL ESTIMATED NUMBERS OF MARINE MAMMALS, AND PERCENTAGE OF MARINE MAMMAL POPULATIONS, POTENTIALLY TAKEN AS A RESULT OF THE PLANNED ACTIVITIES

Species (stock)	2019	2020	2021	2022	2023	2024 <sup>1</sup>	Highest total take in a single year	Stock abundance	Percentage of stock taken <sup>2</sup>
Harbor seal (CA) .....	19,524	22,733	27,652	35,466	43,489	16,742	43,489	30,968	<sup>3</sup> 7.1
California sea lion (U.S) .....	28,187	36,019	51,307	63,805	83,385	21,756	83,385	257,606	32.4
Northern elephant seal (CA breeding) .....	4,170	5,283	7,434	9,253	12,036	5,481	12,036	179,000	6.7
Steller Sea Lion (Eastern) .....	134	168	221	302	387	105	387	52,139	0.7
Northern fur seal (CA) .....	1,190	1,530	2,210	2,721	3,571	26	3,571	14,050	25.4
Guadalupe fur seal (Mexico) .....	46	59	85	104	137	36	137	20,000	0.7

<sup>1</sup> Take numbers shown reflect only the takes that would occur during the period of validity for the rule (January through March only in 2024).

<sup>2</sup> Numbers of take authorized vary by year, therefore estimates shown for percentages of stock taken are based on takes authorized in 2023 which represent the highest take numbers authorized in any single year.

<sup>3</sup> Take totals shown for harbor seals reflect the number of instances of harassment authorized. However, for purposes of determining the percent of stock taken, we use the number of individual animals estimated to be taken (2,188 per year). See further explanation in the section on "small numbers" below.

## Mitigation

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses ("least practicable adverse impact"). NMFS does not have a regulatory definition for "least practicable adverse impact." However, NMFS's implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their

availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

### Launch Mitigation

For missile and rocket launches, unless constrained by other factors (including, but not limited to, human safety, national security concerns or launch trajectories), launches will be scheduled to avoid the harbor seal pupping season (e.g., March through June) when feasible. The USAF will also avoid, whenever possible, launches which are predicted to produce a sonic boom on the NCI during the harbor seal pupping season (e.g., March through June).

### Aircraft Operation Mitigation

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security

incidents (i.e., search-and-rescue, fire-fighting) and except for one area near the VAFB harbor over which aircraft may be flown to within 500 ft of a haulout. Except for take-off and landing actions, a minimum altitude of 300 feet must be maintained for Class 0–2 UAS over all known marine mammal haulouts when marine mammals are present. Class 3 UAS must maintain a minimum altitude of 500 feet, except at take-off and landing. A minimum altitude of 1,000 feet must be maintained over haulouts for Class 4 or 5 UAS.

We have carefully evaluated the USAF's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have determined that these mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

### Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the

MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of significant interactions with marine mammal species in action area (e.g., animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient

noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

The USAF proposed a suite of monitoring measures on both VAFB and the NCI to document impacts of the specified activities on marine mammals. These monitoring measures are described below.

*Monitoring at VAFB*

Monitoring requirements for launches and landings at VAFB are dependent on

the season and on the type of rocket or missile being launched (or landed in the case of the Falcon 9) (Table 14). Acoustic and biological monitoring at VAFB are required for all rocket types during the harbor seal and elephant seal pupping seasons at VAFB (e.g., January 1 through July 31) to ensure that responses of pups to the specified activities are monitored and recorded. Acoustic and biological monitoring at VAFB are also required for all launches of any space launch vehicle types that have not been previously monitored three times, for any space launch vehicle types that have been previously monitored but for which the launch is predicted to be louder than previous launches of that rocket type (based on modeling by USAF) and, for new types of missiles, regardless of the time of year. Falcon 9 First Stage recovery activities (i.e., boost-back and landings) with sonic booms that have a predicted psf of >1.0 on VAFB (based on sonic boom modeling performed prior to launch) must be monitored (including biological and acoustic monitoring) at VAFB, at any time of year.

TABLE 14—MONITORING MEASURES AT VAFB

Dates	Monitoring requirement on VAFB
Year round .....	<ul style="list-style-type: none"><li>• Launches of new space launch vehicles that have not been monitored 3 previous times.</li><li>• Launches of existing space launch vehicles that are expected to be louder than previous launches of the same vehicle type.</li><li>• Launches of new types of missiles that have not been monitored 3 previous times.</li><li>• Falcon 9 First Stage recoveries with a predicted psf of &gt;1.0 on VAFB.</li></ul>
Jan 1–July 31 .....	<ul style="list-style-type: none"><li>• Launches and recoveries of all space launch vehicles.</li></ul>

Marine mammal monitoring at VAFB must be conducted by at least one NMFS-approved marine mammal observer trained in marine mammal science. Authorized marine mammal observers must have demonstrated proficiency in the identification of all age and sex classes of both common and uncommon pinniped species found at VAFB and must be knowledgeable of approved count methodology and have experience in observing pinniped behavior, especially in response to human disturbances.

Monitoring at the haulout site closest to the facility where the space launch vehicle will be launched must begin at least 72 hours prior to the launch and must continue until at least 48 hours after the launch. Monitoring for each launch must include multiple surveys during each day of monitoring (typically between 4–6 surveys per day) that will record: Species, number, general

behavior, presence of pups, age class, gender, and reaction to launch noise, or to natural or other human-caused disturbances. Environmental conditions will also be recorded, including: Visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

For launches that occur during the elephant seal and harbor seal pupping seasons (January 1 through July 31) a follow-up survey must be conducted within two weeks of the launch to monitor for any potential adverse impacts to pups. For launches that occur during daylight, time-lapse photo and/or video recordings will occur during launch, as marine mammal observers are not allowed to be present within the launch area or at haulouts on VAFB at the time of launch for safety reasons. The USAF will also use night video monitoring to record responses of pinnipeds to launches that occur in

darkness, when feasible. Night video monitoring may not be practical depending on whether technology is available that can reliably and remotely record responses of pinnipeds at remote haulout locations.

In addition to monitoring pinniped responses to the planned activities on VAFB, the USAF will continue to conduct monthly marine mammal surveys on VAFB. Monthly surveys have been carried out at VAFB for several years and have provided valuable data on abundance, habitat use, and seasonality of pinnipeds on VAFB. The goals of the monthly surveys include assessing haulout patterns and relative abundance over time, resulting in improved understanding of pinniped population trends at VAFB and better enabling assessment of potential long-term impacts of USAF operations. When possible, these surveys will be timed to coincide with the lowest afternoon tides

of each month, when the greatest numbers of animals are typically hauled out. During the monthly surveys, a NMFS-approved observer will record: Species, number, general behavior, presence of pups, age class, gender, and any reactions to natural or human-caused disturbances. Environmental conditions will also be recorded, including: Visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

#### *Monitoring at the NCI*

As described previously, sonic booms are the only stimuli associated with the planned activities that have the potential to result in harassment of marine mammals on the NCI. As pinniped responses on the NCI are dependent on the species and on the intensity of the sonic boom (Table 7), requirements for monitoring on the NCI vary by season and depend on the expected sonic boom level and the pupping seasons of the species expected to be present. Sonic boom modeling will be performed prior to all rocket launches and Falcon 9 recoveries. Acoustic and biological monitoring must be conducted on the NCI if the sonic boom model indicates that pressures from a sonic boom are expected to reach or exceed the levels shown in Table 15. These dates have been determined based on seasons when pups may be present for the species that are most responsive to sonic booms on the NCI based on several years of monitoring data (e.g., harbor seals and California sea lions) (Table 7).

**TABLE 15—MONITORING REQUIREMENTS ON THE NORTHERN CHANNEL ISLANDS BY SEASON**

Sonic boom level (modeled)	Dates
>2 psf .....	March 1—July 31.
>3 psf .....	August 1—September 30.
>4 psf .....	October 1—February 28.

Marine mammal monitoring and acoustic monitoring will be conducted at the closest significant haulout site to the modeled sonic boom impact area. The monitoring site will be selected based upon the model results, with emphasis placed on selecting a location where the maximum sound pressures are predicted and where pinnipeds are expected to be present that are considered most sensitive in terms of responses to sonic booms. Monitoring the responses of mother-pup pairs of any species will also be prioritized. Given the large numbers of pinnipeds

found on some island beaches, smaller focal groups will be monitored. Estimates of the numbers of pinnipeds present on the entire beach will be made and their reactions to the launch noise will be documented. Specialized acoustic instruments will also be used to record sonic booms at the marine mammal monitoring location.

Monitoring must be conducted by at least one NMFS-approved marine mammal observer, trained in marine mammal science. Monitors must be deployed to the monitoring location before, during and after the launch, with monitoring commencing at least 72 hours prior to the launch, occurring during the launch and continuing until 48 hours after the launch (unless no sonic boom is detected by the monitors during the launch and/or by the acoustic recording equipment, at which time monitoring would be discontinued). If the launch occurs in darkness, night-vision equipment will be used, when feasible. The USAF will also conduct video monitoring, including the use of night video monitoring, when feasible (video monitoring is not always effective due to conditions such as fog, glare, and a lack of animals within view from a single observation point). During the pupping season of any species potentially affected by a sonic boom, a follow-up survey must occur within two weeks of the launch to assess any potential adverse effects on pups.

Monitoring for each launch must include multiple surveys each day that record, when possible: Species, number, general behavior, presence of pups, age class, gender, and reaction to sonic booms or natural or human-caused disturbances. Remarks will be recorded, such as the nature and cause of any natural or human-related disturbance, including response to the sonic boom. When flushing behavior is observed, the amount of time it takes for hauled out animals to return to the beach will be recorded, if length of recording allows. Number of marine mammals hauled out will be recorded immediately prior to the launch, when feasible. Environmental conditions will also be recorded, including: Visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

The USAF has complied with the monitoring requirements under the previous LOAs issued from 2013 through 2018.

#### *Reporting*

Reporting requirements include launch monitoring reports submitted after each launch and annual reports

describing all activities conducted at VAFB that are covered under this rule during each year.

A launch monitoring report containing the following information must be submitted to NMFS within 90 days after each rocket launch: Species present, number(s), general behavior, presence of pups, age class, gender, numbers of pinnipeds present on the haulout prior to commencement of the launch, numbers of pinnipeds that responded at a level that would be considered harassment (based on the description of responses in Table 8), length of time(s) pinnipeds remained off the haulout (for pinnipeds that flushed), and any behavioral responses by pinnipeds that were likely in response to the specified activities, including in response to launch noise or sonic boom. Launch reports must also include date(s) and time(s) of each launch (and sonic boom, if applicable); date(s) and location(s) of marine mammal monitoring, and environmental conditions including: Visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction. If a dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported to the NMFS Office of Protected Resources and the NMFS West Coast Regional Office immediately. Results of acoustic monitoring, including the recorded sound levels associated with the launch and/or sonic boom (if applicable) will also be included in the report.

An annual report must be submitted to NMFS by March 1 of each year that summarizes the data reported in all launch reports for the previous calendar year (as described above) including a summary of documented numbers of instances of harassment incidental to the specified activities. Annual reports must also describe any documented takings incidental to the specified activities not included in the launch reports (e.g., takes incidental to UAS operations).

A final comprehensive report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and an assessment of any cumulative impacts on marine mammals from the specified activities.

The USAF has complied with the reporting requirements under the previous LOAs issued from 2013 through 2018.

### Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 5, given that the anticipated effects of this activity on these different marine mammal species are expected to be similar. Activities associated with the planned activities, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne sounds of rocket launches and sonic booms and from sounds or visual stimuli associated with aircraft. Based on the best available information, including monitoring reports from similar activities that have been authorized by NMFS, behavioral responses will likely be limited to reactions such as alerting to the noise, with some animals possibly moving toward or entering the water, depending on the species and the intensity of the sonic boom or launch noise. Repeated exposures of individuals to levels of

sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated instances of Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described above.

Harbor seals, northern elephant seals, and California sea lions breed and pup on VAFB, while harbor seals, northern elephant seals, California sea lions and northern fur seals breed and pup on the Channel Islands. San Miguel Island represents the most important pinniped rookery in the lower 48 states, and as such, extensive research has been conducted there for over two decades, by the USAF as well as by NOAA and independent researchers. From this research, as well as stock assessment reports, it is clear that VAFB operations (including associated sonic booms) have not had any significant impacts on the numbers of animals observed at San Miguel Island rookeries and haulouts and that rocket launches have not resulted in pup abandonment or mortality, nor the abandonment of breeding and pupping habitat (SAIC 2012). Likewise, for the instances of pinnipeds being behaviorally disturbed by sonic booms from rocket launches at VAFB, no evidence has been presented of abnormal behavior, injuries or mortalities, in pup abandonment or mortality, nor the abandonment of breeding and pupping habitat as a result of launch-related activities (SAIC 2013, CEMML 2018). As an example, a total of eight Delta II and Taurus space vehicle launches occurred from north VAFB, near the Spur Road and Purisima Point haulout sites, from February, 2009 through February, 2014. Of these eight launches, three occurred during the harbor seal pupping season. The continued use by harbor seals of the Spur Road and Purisima Point haulout sites indicates that it is unlikely that these rocket launches (and associated sonic booms) resulted in long-term disturbances of pinnipeds using the haulout sites.

Post-launch monitoring generally reveals a return to normal behavioral patterns within minutes up to an hour or two of each launch, regardless of species. The number of California sea lions documented on VAFB via monthly marine mammal surveys increased substantially in 2017 compared to the numbers recorded in previous years,

and northern elephant seal pupping was documented on VAFB for the first time in 2017, providing further evidence that the USAF’s activities, which are ongoing, have not negatively impacted annual rates of recruitment or survival. In addition, the USAF will avoid launches, when feasible, during pupping seasons for the species that have been shown through monitoring to be the most sensitive to the stimuli associated with the USAF’s activities. Based on the best available information, including over two decades’ worth of survey data, we do not expect the authorized activities to result in impacts to breeding or pupping, or to negatively impact annual rates of recruitment or survival, for any marine mammal species.

As described above, California sea lions and Guadalupe fur seals are currently experiencing UMEs. The California sea lion UME event has ended but the UME has not been officially closed by NMFS. Strandings of Guadalupe fur seals associated with the Guadalupe fur seals UME have steadily declined since 2015, but the UME remains active. As described above, the USAF’s activities are expected to result in Level B harassment only, in the form of pinnipeds moving or possibly flushing to the water; no serious injury or mortality is expected or authorized and no pup abandonment or impacts to pupping habitat are expected to result. Based on the best available information, we do not expect the authorized activities will result in any adverse effects to pinnipeds that may be impacted by these UMEs, nor do we expect the authorized activities to compound the impacts of these UMEs in any way.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No injury, serious injury, or mortality are anticipated or authorized;
- The anticipated incidences of Level B harassment are expected to consist of, at worst, temporary modifications in behavior (*i.e.*, short distance movements and occasional flushing into the water with return to haulouts within approximately 90 minutes), which are not expected to adversely affect the fitness of any individuals;
- The USAF’s activities are expected to result in no pup abandonment or impacts to breeding and pupping, based on over 20 years of monitoring data;
- The USAF’s activities are expected to result in no long-term changes in the

use by pinnipeds of rookeries and haulouts in the project area, based on over 20 years of monitoring data; and

- The presumed efficacy of planned mitigation measures—including the avoidance of launches, when feasible, during pupping seasons for the species most sensitive to the stimuli associated with the authorized activities—in reducing the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the USAF's activity will have a negligible impact on all affected marine mammal species or stocks.

### Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

See Table 13 for information relating to this small numbers analysis (*i.e.*, numbers of take authorized on an annual basis). We authorize the incidental take of individuals from 6 marine mammal stocks. The amount of taking authorized on an annual basis is less than one-third of the most appropriate abundance estimate for five of these species or stocks; therefore, the numbers of take authorized would be considered small relative to those relevant stocks or populations.

The estimated number of instances of take for harbor seals exceeds the best available stock abundance. However, due to the nature of the specified activity—launch activities occurring at specific locations, rather than a mobile activity occurring throughout the stock range—the available information shows that only a portion of the stock would likely be impacted. It is important to note that the estimated number of expected takes represents instances of take and does not necessarily represent

the number of individual animals expected to be taken, which is what is considered to make the small numbers determination. Multiple exposures to Level B harassment can accrue to the same individual animals over the course of an activity that occurs multiple times in the same area (such as the USAF's planned activities). This is especially likely in the case of species that have limited ranges and that have site fidelity to a location within the project area, as is the case with Pacific harbor seals.

Harbor seals are non-migratory, rarely traveling more than 50 km from their haulout sites. Thus, while the estimated number of annual instances of take may not be considered small relative to the estimated abundance of the California stock of Pacific harbor seals of 30,968 (Carretta *et al.* 2017), a substantially smaller number of individual harbor seals is expected to occur within the project area. We expect that, because of harbor seals' documented site fidelity to haulout locations at VAFB and the NCI, and because of their limited ranges, the same individual harbor seals are likely to be taken repeatedly over the course of the planned activities. Therefore, the number of instances of Level B harassment authorized for harbor seals per year over the 5-year period of validity of the regulations is expected to accrue to a much smaller number of individual harbor seals encompassing a small portion of the overall stock. Thus, while we authorize the instances of incidental take of harbor seals shown in Table 13, we believe that the number of individual harbor seals that will be incidentally taken by the USAF's activities will, in fact, be substantially lower than this number. We base the small numbers determination on the number of individuals taken versus the number of instances of take, as is appropriate when the information is available.

To estimate the number of individual harbor seals expected to be taken by Level B harassment by the USAF's activities, we estimated the maximum number of individual harbor seals that could potentially be taken per activity (*i.e.*, launch, landing, or aircraft activity), both on the NCI and at VAFB. As described above, due to harbor seals' limited ranges and site fidelity to haulout locations at VAFB and the NCI, we believe the maximum number of individual harbor seals that could be taken per activity (*i.e.*, launch, landing, or aircraft activity) represents a conservative estimate of the number of individual harbor seals that would be taken over the course of a year. On VAFB, monthly marine mammal surveys conducted by the USAF

represent the best available information on harbor seal abundance. The maximum number of harbor seals documented during monthly marine mammal surveys at VAFB in the years 2015, 2016 and 2017 was 821 seals (in October, 2015). On the NCI, marine mammal surveys conducted from 2011–2015 (Lowry *et al.*, 2017) represents the best available information on harbor seal abundance. The maximum number of seals documented in surveys from 2011 through 2015 (the most recent information available) was 1,367 seals (in July, 2015) (Lowry *et al.*, 2017). Therefore, we conservatively estimate that the maximum number of harbor seals that could potentially be taken per activity (*i.e.*, launch, landing, or aircraft activity) is 2,188 harbor seals, which represents the combined maximum number of seals expected to be present on the NCI and VAFB during any given activity. As we believe the same individuals are likely to be taken repeatedly over the duration of the planned activities, we use this estimate of 2,188 individual animals taken per activity (*i.e.*, launch, landing, or aircraft activity) for the purposes of estimating the percentage of the stock abundance likely to be taken (7.1 percent).

Based on the analysis contained herein of the USAF's activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

### Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

### Adaptive Management

The regulations governing the take of marine mammals incidental to the USAF's activities at VAFB contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the USAF regarding practicability) on an annual or biennial basis if mitigation or monitoring



measures should be modified (including additions or deletions). Mitigation measures can be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

### Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of ITAs, NMFS consults internally, in this case with the NMFS West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

There is one marine mammal species (Guadalupe fur seal) listed under the ESA with confirmed occurrence in the area expected to be impacted by the USAF's activities. NMFS OPR requested initiation of section 7 consultation with the NMFS West Coast Region Office (WCRO) on the promulgation of five-year regulations and the subsequent issuance of LOAs to the USAF under section 101(a)(5)(A) of the MMPA. On February 15, 2019, WCRO issued a Letter of Concurrence concluding that OPR's action is not likely to adversely affect the Guadalupe fur seal.

### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our proposed action (*i.e.*, the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216-6A, which do not individually or

cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

### Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Office of General Counsel for the U.S. Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The USAF is the sole entity that would be subject to the requirements in these regulations, and the USAF is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA (SpaceX activities are included in these regulations, however all SpaceX activities considered in these regulations originate at VAFB and the takes of marine mammals authorized via these regulations and the subsequent LOA are authorized solely to USAF for activities originating at VAFB). No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. However, this rule does not contain a collection-of-information requirement subject to the provisions of the PRA because the applicant is a Federal agency.

### Waiver of Delay in Effective Date

The Assistant Administrator for NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than USAF and SpaceX is affected by the provisions of these regulations. USAF has informed NMFS that it requests that this final rule take

effect as soon as is possible so as to avoid the potential for disruption in the USAF's planned activities, given that the previous regulations and LOA issued to USAF for activities at VAFB expired March 26, 2019. NMFS was unable to accommodate the 30-day delay of effectiveness period due to the need for additional time to address public comment and carry out required review, which was delayed by the lapse in federal appropriations in December 2018 and January 2019. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are finalized as soon as is possible to avoid the potential for disruption in the USAF's planned activities.

Any delay in finalizing the rule could result in either: (1) A suspension of USAF's planned rocket and missile launch activities, which would have potential implications for national security, or (2) USAF's non-compliance with the MMPA (should USAF conduct launch activities without a valid LOA), thereby resulting in the potential for unauthorized takes of marine mammals. This rule supports Department of Defense (DoD)/USAF functions, and harm to those functions will occur if publication of this proposed rule is delayed. The rule ensures the USAF is in compliance with the MMPA for functions designated as "military readiness" activities, which are defined as "(A) all training and operations of the Armed Forces that relate to combat; and (B) the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use." Specifically, VAFB is a key location in the United States' Global Missile Defense program which has a crucial role in the potential interception of incoming ballistic missiles by supporting the development and testing activities of the Missile Defense Agency. In addition, rocket launches include National Reconnaissance Office and other agencies' payloads which directly support real-time military readiness for deployed combat personnel in all theaters. The activity covered by this rule also directly impacts the safety of human life and protection of property through impacts on national security, for which adequate testing and training, including these rocket and missile launches at VAFB, are necessary. Any delay in finalizing the rule would prevent or significantly damage the execution of these critical functions because the USAF could not conduct certain military readiness, support and monitoring activities in compliance

with the MMPA without the issuance of the rule. The MMPA rule covering these activities expired on March 26, 2019; a delay of 30 days prior to finalizing the rule would result in a further lapse in MMPA authorization for the critical activities described above. Moreover, USAF is ready to implement the rule immediately.

In addition, the LOA allows for authorization of incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore the rule is also granting an exception to USAF and relieving restrictions under the MMPA. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date.

#### List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: April 3, 2019.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

### PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

*Authority:* 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart G to read as follows:

#### Subpart G—Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Air Force Launches and Operations at Vandenberg Air Force Base, California

Sec.

217.60 Specified activity and specified geographical region.

217.61 Effective dates.

217.62 Permissible methods of taking.

217.63 Prohibitions.

217.64 Mitigation requirements.

217.65 Requirements for monitoring and reporting.

217.66 Letters of Authorization.

217.67 Renewals and modifications of Letters of Authorization.

217.68–217.69 [Reserved]

#### Subpart G—Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Air Force Launches and Operations at Vandenberg Air Force Base, California

##### § 217.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the 30th Space Wing, United

States Air Force (USAF) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to rocket and missile launches and aircraft operations.

(b) The taking of marine mammals by the USAF may be authorized in a Letter of Authorization (LOA) only if it occurs from activities originating at Vandenberg Air Force Base.

##### § 217.61 Effective dates.

Regulations in this subpart are effective from April 10, 2019, until April 10, 2024.

##### § 217.62 Permissible methods of taking.

(a) Under an LOA issued pursuant to §§ 216.106 and 217.60 of this chapter, the Holder of the LOA (herein after “USAF”) may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in § 217.60(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

##### § 217.63 Prohibitions.

Notwithstanding takings contemplated in § 217.62(c) and authorized by an LOA issued under §§ 216.106 and 217.66 of this chapter, no person in connection with the activities described in § 217.60 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.66;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

##### § 217.64 Mitigation requirements.

When conducting the activities identified in § 217.60(a), the mitigation measures contained in any Letter of Authorization issued under §§ 216.106 of this chapter and 217.66 must be implemented. These mitigation measures include (but are not limited to):

(a) For missile and rocket launches, the USAF must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or launch mission objectives.

(b) For rocket launches, the USAF must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands from March through June.

(c) Aircraft and helicopter flight paths must maintain a minimum distance of 1,000 feet (ft) (305 meters (m)) from recognized pinniped haulouts and rookeries, whenever possible, except for one area near the VAFB harbor over which aircraft may be flown to within 500 ft of a haulout, and except in emergencies or for real-time security incidents, which may require approaching pinniped haulouts and rookeries closer than 1,000 ft (305 m).

(d) Except for during take-off and landing actions, the following minimum altitudes must be maintained over all known marine mammal haulouts when marine mammals are present: For Class 0–2 UAS, a minimum of 300 ft; for Class 3 UAS, a minimum of 500 ft; and for Class 4 or 5 UAS, a minimum of 1,000 ft.

(e) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with the National Marine Fisheries Service (NMFS), and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

##### § 217.65 Requirements for monitoring and reporting.

(a) To conduct monitoring of rocket launch activities, the USAF must either use video recording, or must designate a qualified on-site individual approved in advance by NMFS, with demonstrated proficiency in the identification of all age and sex classes of both common and uncommon pinniped species found at VAFB and knowledge of approved count methodology and experience in observing pinniped behavior, as specified in the Letter of Authorization, to monitor and document pinniped activity as described below:

(1) For any launches of space launch vehicles or recoveries of the Falcon 9 First Stage occurring from January 1 through July 31, pinniped activity at

VAFB must be monitored in the vicinity of the haulout nearest the launch platform, or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch, and continue for a period of time not less than 48 hours subsequent to the launch;

(2) For any launches of new space launch vehicles that have not been monitored during at least 3 previous launches occurring from August 1 through December 31, pinniped activity at VAFB must be monitored in the vicinity of the haulout nearest the launch or landing platform, or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch, and continue for a period of time not less than 48 hours subsequent to launching;

(3) For any launches of existing space launch vehicles that are expected to result in a louder launch noise or sonic boom than previous launches of the same vehicle type occurring from August 1 through December 31, pinniped activity at VAFB must be monitored in the vicinity of the haulout nearest the launch or landing platform, or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch, and continue for a period of time not less than 48 hours subsequent to launching;

(4) For any launches of new types of missiles occurring from August 1 through December 31, pinniped activity at VAFB must be monitored in the vicinity of the haulout nearest the launch or landing platform, or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch, and continue for a period of time not less than 48 hours subsequent to launching;

(5) For any recoveries of the Falcon 9 First Stage occurring from August 1 through December 31 that are predicted to result in a sonic boom of 1.0 pounds per square foot (psf) or above at VAFB, pinniped activity at VAFB must be monitored in the vicinity of the haulout nearest the launch or landing platform, or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch, and continue for a period of time not less than 48 hours subsequent to launching;

(6) For any launches or Falcon 9 First Stage recoveries occurring from January 1 through July 31, follow-up surveys must be conducted within 2 weeks of the launch;

(7) For any launches or Falcon 9 First Stage recoveries, pinniped activity at the Northern Channel Islands must be

monitored, if it is determined by modeling that a sonic boom of greater than 2.0 psf is predicted to impact one of the islands between March 1 and July 31, greater than 3.0 psf between August 1 and September 30, and greater than 4.0 psf between October 1 and February 28. Monitoring will be conducted at the haulout site closest to the predicted sonic boom impact area, or, in the absence of pinnipeds at that location, at another nearby haulout;

(8) For any launches or Falcon 9 First Stage recoveries for which marine mammal monitoring is required, acoustic measurements must be made; and

(9) Marine mammal monitoring must include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell. Number of marine mammals hauled out must be recorded immediately prior to the launch, unless weather conditions prevent accurate recording or it is technologically infeasible. When flushing behavior is observed, the amount of time for animals to return to the haulout must be recorded.

(10) Marine mammal monitoring of activities that occur during darkness at VAFB must include night video monitoring, when feasible.

(b) The USAF must submit a report to the Administrator, West Coast Region, NMFS, and Office of Protected Resources, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch;

(2) Design of the monitoring program; and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch;

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have moved in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degree, or, entered the water as a result of launch noise;

(iii) For any marine mammals that entered the water, the length of time they remained off the haulout;

(iv) Description of behavioral modifications by pinnipeds that were likely the result of launch noise or sonic boom; and

(v) Results of acoustic monitoring, including the intensity of any sonic boom (psf) and sound levels in SELs,  $SPL_{peak}$  and  $SPL_{rms}$ .

(c) If the authorized activity identified in § 217.60(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not authorized in LOAs, then the USAF must notify the Director, Office of Protected Resources, NMFS, and the stranding coordinator, West Coast Region, NMFS, within 48 hours of the discovery of the injured or dead marine mammal or of the take of marine mammals not authorized in an LOA.

(d) An annual report must be submitted on March 1 of each year to the Office of Protected Resources, NMFS.

(e) A final report must be submitted at least 180 days prior to expiration of these regulations to the Office of Protected Resources, NMFS. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports;

(2) Assess the impacts at each of the major rookeries;

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from the activities specified in § 217.60(a); and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise, sonic booms, and harbor activities on marine mammal populations.

#### **§ 217.66 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, the USAF must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the USAF may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the USAF must apply for and obtain a modification of the LOA as described in § 217.67.

(e) The LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*,

mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

**§ 217.67 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 of this chapter and 217.66 for the activity identified in § 217.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA

under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.67(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.66 for the activity identified in § 217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the USAF's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.62(c), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

**§§ 217.68–217.69 [Reserved]**

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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2019–0216]

RIN 1625–AA00

#### Safety Zone; Apra Outer Harbor, Naval Base Guam

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of Apra Outer Harbor. This action is necessary to provide for the safety of life on these navigable waters near Polaris Point, Guam, during a fireworks display on July 4, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Guam (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 10, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG–2019–0216 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Todd Wheeler, Sector Guam, U.S. Coast Guard; telephone 671–355–4866, email [wwwnguan@uscg.mil](mailto:wwwnguan@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

§ Section

U.S.C. United States Code

## II. Background, Purpose, and Legal Basis

Navy Morale, Welfare and Recreation (MWR) will be conducting a fireworks display between 6 p.m. and 9 p.m. on July 4, 2019. The fireworks are to be launched from a barge in Apra Outer Harbor, approximately 300-yards west of Polaris Point, Guam. Hazards from fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 190-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 190-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

## III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 6 p.m. to 9 p.m. on July 4, 2019. The safety zone would cover all navigable waters within 190 yards of a barge in Apra Outer Harbor located approximately 300 yards west of Polaris Point, Guam. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 6 p.m. to 9 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Apra Outer Harbor for 3 hours. The safety zone will impact a small section of the main channel for Navy traffic, however Navy traffic will be able to transit around the area safely. This is also the main traffic area for the Marianas Yacht Club in Sasa Bay. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this

proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zone lasting no more than 3 hours that would prohibit entry within 190 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION**

**CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0216 to read as follows:

#### § 165.T14–0216 Safety Zone; Apra Outer Harbor, Naval Base Guam.

(a) *Location.* The following areas, within the Captain of the Port Guam (COTP) Zone (See 33 CFR 3.70–15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge for the 4th of July celebrations at Polaris Point, Naval Base Guam. The following position 13 degrees 26 minutes 44.76 seconds N Latitude, 144 degrees 39 minutes 59.16 seconds E Longitude is to be used as a guide to the location of the barge.

(b) *Effective dates.* This section is effective from 6 p.m. through 9 p.m. on July 4, 2019.

(c) *Enforcement.* All persons are required to comply with the general regulations governing safety zones found in § 165.23. Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Guam. Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Guam or his

designated representative. To seek permission to transit the area, the Captain of the Port Guam and his designated representatives can be contacted at telephone number (671) 355-4821 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Any Coast Guard commissioned, warrant, or petty officer, and any other COTP

representative permitted by law, may enforce this temporary safety zone.

(d) *Waiver.* The COTP may waive any of the requirements of this section for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(e) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 46 U.S.C. 70036 and 46 U.S.C. 70052.

Dated: April 5, 2019.

**Christopher M. Chase,**  
*Captain, U.S. Coast Guard, Captain of the Port Guam.*

[FR Doc. 2019-07060 Filed 4-9-19; 8:45 am]

**BILLING CODE 9110-04-P**

# Notices

Federal Register

Vol. 84, No. 69

Wednesday, April 10, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 5, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 10, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs

potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Farm Service Agency

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560-0097.

*Summary of Collection:* The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires foreign investors to report in a timely manner all held, acquired, or transferred U.S. agricultural land under penalty of law to Farm Service Agency (FSA). Authority for the collection of the information was delegated by the Secretary of Agriculture to the Farm Service Agency (FSA). The statute of authority is 92 STAT (1263-1267) or 7 U.S.C. 3501-3508 or Public Law 95-460. Foreign investors may obtain form FSA-153, AFIDA Report, from their local FSA county office or from the FSA internet site.

*Need and Use of the Information:* The regulations at 7 CFR part 781.1-5 require foreign investors who buy, sell, or hold a direct or indirect interest in U.S. agricultural land to report their holdings and transactions to FSA. The information collected from the AFIDA Reports is used to monitor the effect of foreign investment upon family farms and rural communities and in the preparation of a voluntary report to Congress and the President. Congress reviews the report and decides if regulatory action is necessary to limit the amount of foreign investment in U.S. agricultural land. If this information was not collected, USDA could not effectively monitor foreign investment and the impact of such holdings upon family farms and rural communities.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 5,525.

*Frequency of Responses:* Reporting: On occasion; Annually.

*Total Burden Hours:* 2,631.

### Farm Service Agency

*Title:* Servicing Minor Program Loans.

*OMB Control Number:* 0560-0230.

*Summary of Collection:* The Farm Service Agency (FSA) Farm Loan Program staff provides supervised credit

in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. Regulations are promulgated to implement selected provisions of sections 331 and 335 of the Consolidated Farm and Rural Development Act. Section 331 authorizes the Secretary of Agriculture to grant releases from personal liability where security property is transferred to approve applicants who, under agreement, assume the outstanding secured indebtedness. Section 335 provides servicing authority for real estate security; operation or lease of realty, disposition of surplus property; conveyance of complete interest of the United States; easements; and condemnations. The information is collected from FSA Minor Program borrowers who may be individual farmers or farming partnerships, associations, or corporations.

*Need and Use of the Information:* FSA will collect information related to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a Government loan. The information collected is primarily financial data, such as borrower's asset values, current financial information and public use and employment data. Failure to obtain this information at the time of the request for servicing will result in rejection of the borrower's request.

*Description of Respondents:* Farms; Individuals or households; Business or other-for-profit; Not-for-profit institutions; State. Local and Tribal Government.

*Number of Respondents:* 58.

*Frequency of Responses:* Reporting: On occasion; Annually.

*Total Burden Hours:* 37.

**Ruth Brown,**

Departmental Information Collection Clearance Officer.

[FR Doc. 2019-07055 Filed 4-9-19; 8:45 am]

**BILLING CODE 3410-05-P**



**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****[Docket No. APHIS–2018–0101]****Notice of Availability of an Environmental Assessment; Importation of Plants in Approved Growing Media Into the United States****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service is making available a draft programmatic environmental assessment for the importation of plants in approved growing media. The programmatic environmental assessment considers the potential environmental effects of a standardized set of pest risk mitigations for routine market requests to import plants in approved growing media. The programmatic environmental assessment would eliminate the need to prepare a unique environmental assessment for each routine market request, thereby making the process for approving imports of plants in approved growing media simpler and more efficient. We are making the programmatic environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before May 10, 2019.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0101>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0101> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lydia E. Colón, Senior Regulatory Policy Specialist, Plant Health Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, 4700 River Road Unit 133, Riverdale, MD 20737–1237; [Lydia.E.Colon@aphis.usda.gov](mailto:Lydia.E.Colon@aphis.usda.gov); (301) 851–2302.

**SUPPLEMENTARY INFORMATION:** The requirements for importing plants in growing media (PIGM) consist of overlapping phytosanitary risk mitigation measures that together comprise a “systems approach.” The systems approach is designed to protect imported PIGM against pests and diseases during all stages of international trade from the greenhouse to final product delivery. The goal of the systems approach is to minimize the likelihood that any quarantine pest species enter the United States on the commodity proposed for import.

As part of the process for considering PIGM import requests, the Animal and Plant Health Inspection Service (APHIS) currently prepares an environmental assessment (EA) unique to each country’s request to import a specific plant genus in growing media into the United States. We also prepare a pest risk assessment (PRA) and risk mitigation document (RMD) that identify pest mitigation measures that help prevent the entry of pests on the commodity.

The pest mitigation measures we propose for most PIGM import requests are very similar from one request to the next, and for this reason we determined that a single programmatic EA could reduce the need for repetitive documentation of comparable risks for the majority of PIGM import requests we receive. To the extent that the PRA and the RMD prepared for a routine import request do not identify new areas for consideration, a Finding of No Significant Impact could be issued without additional environmental documentation.

We are therefore announcing the availability of a draft programmatic EA that considers the potential environmental effects of a standardized set of pest risk mitigations for routine market requests to import plants in approved growing media. Under APHIS’ preferred alternative in the draft EA, requests for the importation of PIGM would be analyzed in a pest risk analysis and compared to the current systems approach in the USDA Plants for Planting Manual.<sup>1</sup> This process

would streamline approvals for the importation of PIGM by relying on the known combination of pest mitigation measures to provide overlapping or sequential safeguards to manage a wide range of pests. While the systems approach and pest surveillance practices would apply to all PIGM importations, detection of quarantine pests on PIGM would preclude further importation of that plant from that country until revised phytosanitary practices are shown to be effective.

By considering the current systems approach as the default risk mitigation structure for approving imports of PIGM, APHIS would ensure continued levels of safeguarding while facilitating international trade, allowing healthier plant imports, reducing the growing time for plants to reach markets, reducing unnecessary or repetitive environmental and other documentation, and increasing the speed of port of entry inspections.

APHIS’ review and analysis of the proposed action are documented in detail in a draft programmatic EA entitled “Importation of Plants in Approved Growing Media (PIGM) into the United States” (November 2018). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS’ NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 5th day of April 2019.

**Kevin Shea,**  
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–07071 Filed 4–9–19; 8:45 am]

**BILLING CODE 3410–34–P**

<sup>1</sup> [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/plants\\_for\\_planting.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf).

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-201-842]

**Large Residential Washers From Mexico: Preliminary Results of the Antidumping Duty Administrative Review; 2017–2018**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the sole exporter/producer subject to this administrative review, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux), made sales of subject merchandise at less than normal value (NV) during the period of review (POR), February 1, 2017, through January 31, 2018.

**DATES:** Applicable April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Janz or Maria Tatarska, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2972 or (202) 482-1562, respectively.

**Scope of the Order**

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.<sup>1</sup>

**SUPPLEMENTARY INFORMATION:****Background**

On April 16, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on large

residential washers from Mexico.<sup>2</sup> In October 2018, we extended the preliminary results of this review to no later than February 28, 2019.<sup>3</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019.<sup>4</sup> If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary results of this review is now April 9, 2019. For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.

**Methodology**

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

**Preliminary Results of the Review**

As a result of this review, Commerce preliminarily determines that a

weighted-average margin of 7.83 percent exists for Electrolux for the POR, February 1, 2017, through January 31, 2018.

**Assessment Rates**

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.<sup>5</sup>

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.<sup>6</sup> The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.<sup>7</sup>

We intend to issue instructions to CBP 41 days after the publication date of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate

<sup>1</sup> For a full description of the scope of the order see Memorandum, "Decision Memorandum for the Preliminary Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018).

<sup>3</sup> See Memorandum, "Large Residential Washers from Mexico: Extension of the Deadline for Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review," dated October 26, 2018.

<sup>4</sup> See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>5</sup> See 19 CFR 351.212(b).

<sup>6</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

<sup>7</sup> See section 751(a)(2)(C) of the Act.

will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 36.52 percent, the all-others rate established in the LTFV investigation.<sup>8</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

#### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).<sup>9</sup> Interested parties may submit case brief to Commerce no later than 30 days after the date of publication of this notice.<sup>10</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.<sup>11</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>12</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>13</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.<sup>14</sup> Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.<sup>15</sup>

Commerce intends to issue the final results of this administrative review, including the results of its analysis of

issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.<sup>16</sup>

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: April 5, 2019.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
  - A. Comparisons to Normal Value
  - B. Determination of Comparison Method
  - C. Results of the Differential Pricing Analysis
- V. Product Comparisons
- VI. Constructed Export Price
- VII. Normal Value
  - A. Home Market Viability and Selection of Comparison Market
  - B. Affiliated Party Transactions and Arm's-Length Test
  - C. Level of Trade
  - D. Cost of Production Analysis
    1. Calculation of Cost of Production
    2. Test of Comparison Market Sales Prices
    3. Results of the COP Test
  - E. Calculation of Normal Value Based on Comparison Market Prices
  - F. Calculation of Normal Value Based on Constructed Value
- VIII. Currency Conversion
- IX. Recommendation

[FR Doc. 2019-07079 Filed 4-9-19; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Request for Nominations for Members To Serve on National Institute of Standards and Technology Federal Advisory Committees

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Standards and Technology (NIST or Institute) invites and requests nomination of individuals for appointment to eight existing Federal Advisory Committees (Committees): Board of Overseers of the Malcolm Baldrige National Quality Award; Judges Panel of the Malcolm Baldrige National Quality Award; Information Security and Privacy Advisory Board; Manufacturing Extension Partnership Advisory Board; National Construction Safety Team Advisory Committee; Advisory Committee on Earthquake Hazards Reduction; NIST Smart Grid Advisory Committee; and Visiting Committee on Advanced Technology. NIST will consider nominations received in response to this notice for appointment to the Committees, in addition to nominations already received. Registered Federal lobbyists may not serve on NIST Federal Advisory Committees in an individual capacity.

**DATES:** Nominations for all Committees will be accepted on an ongoing basis and will be considered as and when vacancies arise.

**ADDRESSES:** See below.

#### SUPPLEMENTARY INFORMATION:

##### Board of Overseers of the Malcolm Baldrige National Quality Award

**Address:** Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020. Nominations may also be submitted via fax to 301-975-4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at <http://www.nist.gov/baldrige/community/overseers.cfm>.

**Contact Information:** Robert Fangmeyer, Director, Baldrige Performance Excellence Program and Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020;

<sup>8</sup> See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013).

<sup>9</sup> See 19 CFR 351.224(b).

<sup>10</sup> See 19 CFR 351.309(c).

<sup>11</sup> See 19 CFR 351.309(d).

<sup>12</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>13</sup> See 19 CFR 351.303.

<sup>14</sup> See 19 CFR 351.310(c).

<sup>15</sup> See 19 CFR 351.310(d).

<sup>16</sup> See section 751(a)(3)(A) of the Act.

telephone 301-975-4781; fax 301-975-4967; or via email at [robert.fangmeyer@nist.gov](mailto:robert.fangmeyer@nist.gov).

**Committee Information:** The Board of Overseers of the Malcolm Baldrige National Quality Award (Board) was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### *Objectives and Duties*

1. The Board shall review the work of the private sector contractor(s), which assists the Director of NIST in administering the Malcolm Baldrige National Quality Award (Award). The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall make an annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Board will report to the Director of NIST.

#### *Membership*

1. The Board will consist of at least five and approximately 12 members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of organizational performance excellence. There will be a balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. The Board will include members familiar with the quality, performance improvement operations, and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions.

2. Board members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on the last day of February of the appropriate years.

#### *Miscellaneous*

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet at least annually, but usually two times a year. Additional meetings may be called as deemed necessary by the NIST Director

or by the Chairperson. Meetings are usually one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

#### *Nomination Information*

1. Nominations are sought from the private and public sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, educational institutions, health care providers, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

#### **Judges Panel of the Malcolm Baldrige National Quality Award**

**Address:** Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020. Nominations may also be submitted via fax to 301-975-4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at [http://patapsco.nist.gov/BoardofExam/Examiners\\_Judge2.cfm](http://patapsco.nist.gov/BoardofExam/Examiners_Judge2.cfm).

**Contact Information:** Robert Fangmeyer, Director, Baldrige Performance Excellence Program and Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 1020,

Gaithersburg, MD 20899-1020; telephone 301-975-4781; fax 301-975-4967; or via email at [robert.fangmeyer@nist.gov](mailto:robert.fangmeyer@nist.gov).

#### *Committee Information*

The Judges Panel of the Malcolm Baldrige National Quality Award (Panel) was established in accordance with 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### *Objectives and Duties*

1. The Panel will ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. Based on a review of results of examiners' scoring of written applications, Panel members will vote on which applicants' merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The Panel will also review results and findings from site visits, and recommend Award recipients.

2. The Panel will ensure that individual judges will not participate in the review of applicants as to which they have any real or perceived conflict of interest.

3. The Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Panel will report to the Director of NIST.

#### *Membership*

1. The Panel will consist of no less than 9, and not more than 12, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. The Panel will include members familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions.

2. Panel members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on the last day of February of the appropriate year.

#### *Miscellaneous*

1. Members of the Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. When approved by the Department of Commerce Chief Financial Officer and Assistant Secretary for Administration, Panel meetings are closed or partially closed to the public.

#### *Nomination Information*

1. Nominations are sought from all U.S. service and manufacturing industries, small businesses, education, health care, and nonprofits as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, health care providers, educational institutions, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Panel, and will actively participate in good faith in the tasks of the Panel. Besides participation at meetings, it is desired that members be either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Panel duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Panel membership.

#### **Information Security and Privacy Advisory Board (ISPAB)**

*Address:* Please submit nominations to Jeffrey Brewer, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to 301–975–8670, Attn: ISPAB Nominations. Additional information regarding the ISPAB, including its charter and current membership list, may be found on its electronic home page at <http://>

[csrc.nist.gov/groups/SMA/ispab/index.html](http://csrc.nist.gov/groups/SMA/ispab/index.html).

*Contact Information:* Jeffrey Brewer, ISPAB Designated Federal Officer (DFO), NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2489; fax: 301–975–8670; or via email at [jeffrey.brewer@nist.gov](mailto:jeffrey.brewer@nist.gov).

#### *Committee Information*

The ISPAB (Committee or Board) was originally chartered as the Computer System Security and Privacy Advisory Board by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). The E-Government Act of 2002 (Pub. L. 107–347, Title III), amended Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), including changing the Committee's name, and the charter was amended accordingly.

#### *Objectives and Duties*

1. The Board will identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

2. The Board will advise NIST, the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal Government information systems, including thorough review of proposed standards and guidelines developed by NIST.

3. The Board shall report to the Director of NIST.

4. The Board reports annually to the Secretary of Commerce, the Secretary of Homeland Security, the Director of OMB, the Director of the National Security Agency, and the appropriate committees of the Congress.

5. The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### *Membership*

1. The Director of NIST will appoint the Chairperson and the members of the ISPAB, and members serve at the discretion of the NIST Director. Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

2. The ISPAB will consist of a total of 12 members and a Chairperson, for a total of 13.

- The Board will include four members from outside the Federal Government who are eminent in the information technology industry, at

least one of whom is representative of small or medium sized companies in such industries.

- The Board will include four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology.

- The Board will include four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of whom shall be from the National Security Agency.

#### *Miscellaneous*

1. Members of the Board, other than full-time employees of the Federal government, will not be compensated for their services, but will, upon request, be allowed travel expenses pursuant to 5 U.S.C. 5701 *et seq.*, while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

2. Meetings of the ISPAB are usually two to three days in duration and are usually held quarterly. ISPAB meetings are open to the public, including the press. Members do not have access to classified or proprietary information in connection with their ISPAB duties.

#### *Nomination Information*

1. Nominations are being accepted in all three categories described above.

2. Nominees should have specific experience related to information security or privacy issues, particularly as they pertain to Federal information technology. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

3. Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their ISPAB duties.

4. Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will

be kept on file to be reviewed as ISPAB vacancies occur.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

#### **Manufacturing Extension Partnership (MEP) Advisory Board**

*Address:* Please submit nominations to Ms. Cheryl Gendron, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899-4800. Nominations may also be submitted via fax to 301-963-6556, or via email at [Cheryl.Gendron@nist.gov](mailto:Cheryl.Gendron@nist.gov). Additional information regarding MEP, including its charter may be found on its electronic home page at <http://www.nist.gov/mep/advisory-board.cfm>.

*Contact Information:* Ms. Cheryl Gendron, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899-4800; telephone 301-975-4919, fax 301-963-6556; or via email at [Cheryl.Gendron@nist.gov](mailto:Cheryl.Gendron@nist.gov).

#### *Committee Information*

The MEP Advisory Board (Board) is authorized under section 501 of the American Innovation and Competitiveness Act (Pub. L. 114-329); codified at 15 U.S.C. 278k(m), as amended, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### *Objectives and Duties*

1. The Board will provide advice on MEP activities, plans, and policies.
2. The Board will assess the soundness of MEP plans and strategies.
3. The Board will assess current performance against MEP program plans.
4. The Board will function solely in an advisory capacity, and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.
5. The Board shall transmit through the Director of NIST an annual report to the Secretary of Commerce for transmittal to Congress not later than 30 days after the submission to Congress of the President's annual budget request each year. The report shall address the status of the MEP program.

#### *Membership*

1. The Board shall consist of not fewer than 10 members, appointed by the Director of NIST and broadly representative of stakeholders. At least 2 members shall be employed by or on an advisory board for a MEP Center, at least 5 members shall be from U.S. small businesses in the manufacturing sector,

and at least 1 member shall represent a community college. No member shall be an employee of the Federal Government.

2. The Director of NIST shall appoint the members of the Board. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Board members serve at the discretion of the Director of NIST.

3. The term of office of each member of the Board shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. Any person who has completed two consecutive full terms of service on the Board shall thereafter be ineligible for appointment during the one-year period following the expiration of the second term.

#### *Miscellaneous*

1. Members of the Board will not be compensated for their services but will, upon request, be allowed travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.*, while attending meetings of the Board or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.

2. The Board will meet at least biannually. Additional meetings may be called by the Director of NIST or the Designated Federal Officer (DFO) or his or her designee.

3. Committee meetings are open to the public.

#### *Nomination Information*

1. Nominations are being accepted in all categories described above.
2. Nominees should have specific experience related to manufacturing and industrial extension services. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Each nomination letter should state that the person agrees to the nomination and acknowledges the responsibilities of serving on the MEP Advisory Board.
3. Selection of MEP Advisory Board members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.
4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse MEP Advisory Board membership.

#### **National Construction Safety Team (NCST) Advisory Committee**

*Address:* Please submit nominations to Benjamin Davis, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899-8604. Additional information regarding the NCST, including its charter may be found on its electronic home page at <https://www.nist.gov/el/disaster-resilience/disaster-and-failure-studies/national-construction-safety-team-ncst/advisory>.

*Contact Information:* Judith Mittrani-Reiser, Director, Disaster and Failure Studies Program, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899-8604, telephone 301-975-0684; or via email at [judith.mittrani-reiser@nist.gov](mailto:judith.mittrani-reiser@nist.gov).

#### *Committee Information*

The NCST Advisory Committee (Committee) was established in accordance with the National Construction Safety Team Act, Public Law 107-231 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### *Objectives and Duties*

1. The Committee shall advise the Director of NIST on carrying out the National Construction Safety Team Act (Act), review the procedures developed under section 2(c)(1) of the Act, and review the reports issued under section 8 of the Act.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. On January 1 of each year, the Committee shall transmit to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes: (1) An evaluation of National Construction Safety Team (Team) activities, along with recommendations to improve the operation and effectiveness of Teams, and (2) an assessment of the implementation of the recommendations of Teams and of the Committee.

#### *Membership*

1. The Committee shall consist of no less than 4 and no more than 12 members. Members shall reflect the wide diversity of technical disciplines and competencies involved in the National Construction Safety Teams investigations. Members shall be selected on the basis of established

records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

#### Miscellaneous

1. Members of the Committee shall not be compensated for their services but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5703.

2. Members of the Committee shall serve as Special Government Employees (SGEs), will be subject to the ethics standards applicable to SGEs, and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee shall meet at least once per year. Additional meetings may be called whenever requested by the NIST Director or the Designated Federal Officer (DFO); such meetings may be in the form of telephone conference calls and/or videoconferences.

#### Nomination Information

1. Nominations are sought from industry and other communities having an interest in the National Construction Safety Teams investigations.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the nominee agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

#### Advisory Committee on Earthquake Hazards Reduction (ACEHR)

*Address:* Please submit nominations to Tina Faecke, Management and Program Analyst, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899-8604. Nominations may also be submitted via

fax to 301-975-4032 or email at [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov). Additional information regarding the ACEHR, including its charter and executive summary may be found on its electronic home page at <http://www.nehrp.gov>.

*Contact Information:* Steven McCabe, Director, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899-8604, telephone 301-975-8549, fax 301-975-4032; or via email at [steven.mccabe@nist.gov](mailto:steven.mccabe@nist.gov).

#### Committee Information

The Advisory Committee on Earthquake Hazards Reduction (Committee) was established in accordance with the National Earthquake Hazards Reduction Program Reauthorization Act of 2004, Public Law 108-360 (42 U.S.C. 7704(a)(5)) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### Objectives and Duties

1. The Committee will act in the public interest to assess trends and developments in the science and engineering of earthquake hazards reduction; effectiveness of the National Earthquake Hazards Reduction Program (Program) in carrying out the activities under section (a)(2) of the Earthquake Hazards Reduction Act of 1977, as amended, (42 U.S.C. 7704(a)(2)); the need to revise the Program; and the management, coordination, implementation, and activities of the Program.

2. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall report to the Director of NIST at least once every two years on its findings of the assessments and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC).

#### Membership

1. The Committee shall consist of not fewer than 11, nor more than 17 members. Members shall reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the

National Earthquake Hazards Reduction Program.

2. The Director of NIST shall appoint the members of the Committee. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that members shall have staggered terms such that the Committee will have approximately one-third new or reappointed members each year.

#### Miscellaneous

1. Members of the Committee shall not be compensated for their services, but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chairperson, while away from their homes or regular places of business.

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee members shall meet face-to-face at least once per year. Additional meetings may be called whenever requested by the NIST Director; such meetings may be in the form of telephone conference calls and/or videoconferences.

4. Committee meetings are open to the public.

#### Nomination Information

1. Members will be drawn from industry and other communities having an interest in the Program, such as, but not limited to, research and academic institutions, industry standards development organizations, state and local government, and financial communities, who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines.

2. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the two-year period following the expiration of the second term.

3. Nominees should have established records of distinguished service. The field of expertise that the candidate



represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the nominee agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad based and diverse Committee membership.

#### **NIST Smart Grid Advisory Committee**

*Address:* Please submit nominations to Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, NIST, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200. Nominations may also be submitted via email to [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov). Information about the NIST Smart Grid Advisory Committee may be found at <https://www.nist.gov/engineering-laboratory/smart-grid/smart-grid-federal-advisory-committee>.

*Contact Information:* Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, NIST, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; telephone 301–975–2254, fax 301–948–5668; or via email at [cuong.nguyen@nist.gov](mailto:cuong.nguyen@nist.gov).

#### **Committee Information**

The NIST Smart Grid Advisory Committee (Committee) was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App and with the concurrence of the General Services Administration.

#### **Objectives and Duties**

1. The Committee shall advise the Director of NIST in carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140).

2. The Committee duties are solely advisory in nature in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide input to NIST on the Smart Grid Standards, Priorities, and Gaps, on the overall direction, status and health of the Smart Grid implementation by the Smart Grid

industry including identification of issues and needs, and on the direction of smart grid research and standards activities.

5. Upon request of the Director of NIST, the Committee will prepare reports on issues affecting Smart Grid activities.

#### **Membership**

1. The Committee shall consist of no less than 9 and no more than 15 members. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting Smart Grid deployment and operations. Members shall reflect the wide diversity of technical disciplines and competencies involved in the Smart Grid deployment and operations and will come from a cross section of organizations.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

#### **Miscellaneous**

1. Members of the Committee shall not be compensated for their service, but will, upon request, be allowed travel and per diem expenses, in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or subcommittees thereof, while away from their homes or regular places of business.

2. The Committee shall meet approximately two times per year at the call of the Designated Federal Officer (DFO). Additional meetings may be called by the DFO whenever one-third or more of the members so request it in writing or whenever the Director of NIST requests a meeting.

#### **Nomination Information**

1. Nominations are sought from all fields involved in issues affecting the Smart Grid.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of

serving on the Committee, and will actively participate in good faith in the tasks of the Committee. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

#### **Visiting Committee on Advanced Technology (VCAT)**

*Address:* Please submit nominations to Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060. Nominations may also be submitted via fax to 301–216–0529 or via email at [stephanie.shaw@nist.gov](mailto:stephanie.shaw@nist.gov). Additional information regarding the VCAT, including its charter, current membership list, and past reports may be found on its electronic homepage at <http://www.nist.gov/director/vcat/>.

*Contact Information:* Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060, telephone 301–975–2667, fax 301–216–0529; or via email at [stephanie.shaw@nist.gov](mailto:stephanie.shaw@nist.gov).

#### **Committee Information**

The VCAT (Committee) was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

#### **Objectives and Duties**

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress. 15 U.S.C. 278(a).

2. The Committee shall provide an annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect NIST, or with which the Committee in its official role as the private sector policy adviser of NIST is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures. 15 U.S.C. 278(h)(1). The Committee shall submit, through the



Director of NIST, to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate. 15 U.S.C. 278(h)(2).

3. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Committee shall report to the Director of NIST.

#### Membership

1. The Director of NIST shall appoint the members of the Committee.

Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. 15 U.S.C. 278(a). Members shall be selected solely on the basis of established records of distinguished service; shall provide representation of a cross-section of traditional and emerging United States industries; and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee. 15 U.S.C. 278(b).

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs.

3. The Committee shall consist of not fewer than nine members appointed by the Director of NIST, a majority of whom shall be from United States industry. 15 U.S.C. 278(a). The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. 15 U.S.C. 278(c)(1). Members shall serve at the discretion of the Director of NIST.

4. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the one-year period following the expiration of the second term. 15 U.S.C. 278(c)(1).

5. Pursuant to 15 U.S.C. 278(f), the Committee chairperson and vice chairperson shall be elected by the members of the Committee at each annual meeting occurring in an even-numbered year. The vice chairperson shall perform the duties of the chairperson in his or her absence. In case a vacancy occurs in the position of the chairperson or vice chairperson, the Committee shall elect a member to fill such vacancy.

6. Members of the Committee will not be compensated for their services, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C.

5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

7. Pursuant to 15 U.S.C. 278(g), the Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff members shall be appointed by the Director after consultation with the chairperson of the Committee and assigned at the direction of the Committee.

8. *Subcommittees:* Pursuant to 15 U.S.C. 278(e), the Committee shall have an executive committee, and may delegate to it such powers and functions of the Committee as it deems appropriate. The Committee and/or the Director of NIST may establish such other subcommittees, task forces, and working groups consisting of members from the parent Committee as may be necessary, subject to the provisions of FACA, the FACA implementing regulations, and applicable Department of Commerce guidance. Subcommittees must report back to the Committee and any recommendations based on their work will be deliberated and agreed upon by the Committee prior to dissemination to NIST.

#### Miscellaneous

1. Meetings of the VCAT usually take place at the NIST headquarters in Gaithersburg, Maryland. The Committee will meet at least twice each year at the call of the chairperson or whenever one-third of the members so request in writing. The Committee shall not act in the absence of a quorum, which shall consist of a majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee. 15 U.S.C. 278(d).

2. Generally, Committee meetings are open to the public.

#### Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or

individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

**Kevin A. Kimball,**  
*NIST Chief of Staff.*

[FR Doc. 2019-07100 Filed 4-9-19; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Advisory Committee on Earthquake Hazards Reduction Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** National Institute of Standards and Technology (NIST)'s Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee) will hold an open meeting on Tuesday August 20, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time and Wednesday, August 21, 2019, from 8:30 a.m. to 2:30 p.m. Eastern Time.

**DATES:** The ACEHR will meet on Tuesday, August 20, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time and Wednesday, August 21, 2019, from 8:30 a.m. to 2:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held in the Heritage Room, Administration Building 101, at NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899, with an option to participate via teleconference or webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Tina Faecke, Management and Program Analyst, National Earthquake Hazards Reduction Program (NEHRP), Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899-8604. Ms. Faecke's email address is [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov) and her phone number is (301) 975-5911.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 103 of the NEHRP Reauthorization Act of 2004 (Public Law 108–360), 42 U.S.C. 7704(a)(5), and the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Committee is composed of 12 members, appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will meet on Tuesday, August 20, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time and Wednesday, August 21, 2019, from 8:30 a.m. to 2:30 p.m. Eastern Time. The meeting will be open to the public. The primary purpose of this meeting is for the Committee to finalize their 2019 biennial Report on the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda and any meeting materials will be posted on the NEHRP website at <http://nehrrp.gov/>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. On August 20, 2019, approximately fifteen minutes will be reserved near the beginning of the meeting for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements to ACEHR, National Institute of Standards and Technology, Mail Stop 8604, 100 Bureau Drive, Gaithersburg, MD 20899, via fax at (301) 975–4032, or electronically by email to [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov).

All visitors to the NIST site are required to pre-register to be admitted. Please submit your full name, estimated time of arrival, email address, and phone number to Tina Faecke by 5:00

p.m. Eastern Time, Tuesday, August 6, 2019. Non-U.S. citizens must submit additional information; please contact Ms. Faecke. Ms. Tina Faecke's email address is [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov), and her phone number is (301) 975–5911. If you wish to participate via teleconference or webinar, please submit your full name, affiliation, and phone number to Ms. Faecke by 5:00 p.m. Eastern Time, Tuesday, August 6, 2019. After pre-registering, participants will be provided with detailed instructions on how to join the teleconference or webinar remotely. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (P.L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Faecke at (301) 975–5911 or visit: [http://www.nist.gov/public\\_affairs/visitor/](http://www.nist.gov/public_affairs/visitor/).

**Kevin A. Kimball,**

*Chief of Staff.*

[FR Doc. 2019–07098 Filed 4–9–19; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG933**

### South Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council's (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) in April.

**DATES:** The Snapper Grouper AP meeting will take place April 24, 2019, from 1:30 p.m. to 5 p.m., April 25, from 8:30 a.m. until 5 p.m., and April 26, from 8:30 a.m. until 12 p.m.

**ADDRESSES:**

**Meeting address:** The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., Charleston, SC 29418.

**Council address:** South Atlantic Fishery Management Council, 4055

Faber Place Drive, Suite 201, N. Charleston, SC 29406.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** The Snapper Grouper AP meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information, a public comment form, and other meeting materials will be posted to the Council's website at: <http://safmc.net/safmc-meetings/current-advisory-panel-meetings/> as it becomes available.

Agenda items for the Snapper Grouper AP meeting include the following: A review and update on amendments to fishery management plans that are currently under development by the Council or undergoing Secretarial review that impact the snapper grouper fishery; a review of draft Regulatory Amendment 29 to the Snapper Grouper Fishery Management Plan (FMP) addressing best fishing practices with the AP providing recommendations on how to define a descending device; a review and discussion of the draft Acceptable Biological Catch Control Rule Amendment with AP members providing recommendations on risk ratings for managed stocks; and a review of the proposed management actions and alternatives in the draft Recreational Accountability Measures Amendment. The AP will also draft a Fishery Performance Report for blueline tilefish; receive a presentation on the results of recent Recreational Workshops conducted by the American Sportfishing Association, Coastal Conservation Association, and Yamaha Marine Group; receive a presentation from the Permits Office at the NOAA Fisheries' Southeast Regional Office; a presentation on the Effects of Recreational Management Actions on Select Snapper Grouper Species; an update on the Council's Citizen Science Program, and discuss spearfishing in the snapper grouper fishery. In addition, the AP will review the objectives as listed in the Snapper Grouper FMP. The AP will also elect a new Chair and Vice-Chair. The AP will develop recommendations as necessary for consideration by the Council's Snapper Grouper Committee.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be

directed to the Council office (see **ADDRESSES**) 3 days prior to the public meetings.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 5, 2019.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2019-07061 Filed 4-9-19; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Groundfish Tagging Program

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 10, 2019.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at [PRAComments@doc.gov](mailto:PRAComments@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Rebecca Reuter, (206) 526-4234 or email [rebecca.reuter@noaa.gov](mailto:rebecca.reuter@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This request is for extension of a currently approved information collection. The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, and the Alexander Archipelago of Southeast

Alaska), California, Oregon, and Washington. Fish movement information from recovered tags is used in population dynamics models for stock assessment. There are three general categories of tags. Simple plastic tags (spaghetti tags) are external tags approximately two inches long, printed with code numbers. When a tag is returned, the tag number is correlated with databases of released, tagged fish to determine the net movement and growth rate of the tagged fish. Archival tags are microchips with sensors encased in plastic cylinders that record the depth, temperature or other data, which can be downloaded electronically from the recovered tags. Pop-off satellite tags are programmed to release from the fish and upload archived data (depth, temperature, and approximate geolocation) to passing satellites, therefore data is received independent of the fishery. The groundfish tagging and tag recovery program is part of the fishery resource assessment and data collection that the National Marine Fisheries Service (NMFS) conducts under the Magnuson-Stevens Act authority as codified in 16 U.S.C. 1801(a)(8).

##### II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. Reporting forms with pre-addressed and postage-free envelopes are distributed to processors and catcher vessels.

##### III. Data

*OMB Control Number:* 0648-0276.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved collection).

*Affected Public:* Not-for-profit institutions; State, local, or tribal government; business or other for-profit organizations.

*Estimated Number of Respondents:* 440.

*Estimated Time per Response:* 5 minutes for returning a regular tag, and 20 minutes for returning an internal archival tag.

*Estimated Total Annual Burden Hours:* 89.

*Estimated Total Annual Cost to Public:* \$30 in recordkeeping/reporting costs (if the fisherman chooses to return an electronic tag himself instead via a NMFS observer).

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019-07054 Filed 4-9-19; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection

#### Activities: Notice of Intent To Revise Collection Number 3038-0084, Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on the proposed revision of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collection of information mandated by Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery) 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations).

**DATES:** Comments must be submitted on or before June 10, 2019.

**ADDRESSES:** You may submit comments, identified by “Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants,” and Collection Number 3038–0084 by any of the following methods:

- The Agency’s website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5175; email: [gscopino@cftc.gov](mailto:gscopino@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA,<sup>1</sup> Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Title:* Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (OMB Control No. 3038–0084). This is a request for an extension of a currently approved information collection.

*Abstract:* On April 3, 2012 the Commission adopted Commission Regulations 23.600 (Risk Management Program), 23.601 (Monitoring of

Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery) 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations)<sup>2</sup> pursuant to section 4s(j)<sup>3</sup> of the Commodity Exchange Act (“CEA”). The above regulations adopted by the Commission would, among other things, require swap dealers (“SD”)<sup>4</sup> and major swap participants (“MSP”)<sup>5</sup> to develop a risk management program (including a plan for business continuity and disaster recovery and policies and procedures designed to ensure compliance with applicable position limits). The Commission believes that the information collection obligations imposed by the above regulations are essential to ensuring that swap dealers and major swap participants maintain adequate and effective risk management programs and policies and procedures to ensure compliance with position limits. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only

<sup>2</sup> 17 CFR 23.600, 23.601, 23.602, 23.603, 23.606, 23.607.

<sup>3</sup> 7 U.S.C. 6s(j).

<sup>4</sup> For the definition of SD, see section 1a(49) of the CEA and Commission regulation 1.3.7 U.S.C. 1a(49) and 17 CFR 1.3.

<sup>5</sup> For the definitions of MSP, see section 1a(33) of the CEA and Commission regulation 1.3.7 U.S.C. 1a(33) and 17 CFR 1.3.

information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>6</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

*Number of Registrants:* 103.

*Estimated Average Burden Hours per Registrant:* 1,148.5.

*Estimated Aggregate Burden Hours:* 118,295.5.

*Frequency of Recordkeeping:* As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 4, 2019.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2019–07027 Filed 4–9–19; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Notice of Availability of a Draft Environmental Assessment for the Juniper Butte Land Withdrawal Extension, Mountain Home Air Force Base, Idaho

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Air Force (Air Force) is issuing this notice of availability to advise the public of the availability of a Draft Environmental Assessment (EA) for the Juniper Butte Land Withdrawal Extension, Mountain Home Air Force Base, Idaho.

<sup>6</sup> 17 CFR 145.9.

<sup>1</sup> 44 U.S.C. 3501 *et seq.*

**DATES:** A public meeting will be held in Mountain Home, Idaho, from 5 p.m. to 7 p.m. on April 25, 2019 at the American Legion (VFW Post 26), 515 E 2nd South Street, Mountain Home, Idaho 83647.

**ADDRESSES:** For questions regarding the Proposed Action or EA development, contact Public Affairs at 366FW.PA.Public.Affairs@us.af.mil or 208-828-6800. Although comments can be submitted to the Air Force any time during the EA process, comments are requested within 60 days from the date of this publication to ensure full consideration in the process. Comments can be submitted by email to 366FW.PA.Public.Affairs@us.af.mil, mail to, 366 FW/PA, 366 Gunfighter Avenue, Suite 310, Mountain Home AFB 83648, or in person by attending the public meeting.

**FOR FURTHER INFORMATION CONTACT:** Robin Divine at 208-828-6800.

**SUPPLEMENTARY INFORMATION:** The Draft EA has been prepared to consider the potential environmental consequences of extending the public lands withdrawal established in October 1998 under the *Juniper Butte Range Withdrawal Act of 1999*, Public Law (Pub. L.) 105-261 at Mountain Home Range Complex associated with Mountain Home Air Force Base (AFB), Idaho. Under Public Law 105-261, approximately 11,816 acres of public land, located in Owyhee and Twin Falls counties, Idaho, from the Department of Interior, Bureau of Land Management was withdrawn to the Air Force for military use. Public Law 105-261 will expire in 2023; therefore, the Air Force is proposing to extend the withdrawal of this public land for continued military training for an additional 25 years. In addition, except as provided in subsection 2908(f) of Public Law 105-261, withdrawn and acquired mineral resources within the boundaries of the Juniper Butte Range will continue as originally withdrawn from the United States mining laws.

The extension would allow the Air Force to sustain its mission for enhanced readiness training as well as maintain critical existing assets that support the mission. A No Action Alternative is included in the Draft EA for evaluation. Under the No Action Alternative, the withdrawal of public lands would not be extended, and public lands would be relinquished to the Bureau of Land Management. The Air Force would retain the restricted airspace R-3204A, B, and C; however, training activities would exclude ordnance drops on the existing withdrawal. The analysis of the No

Action Alternative provides a benchmark to enable Air Force decision-makers to compare the magnitude of the potential environmental effects of the Proposed Action.

The Air Force is soliciting comments from interested local, state, and federal elected officials and agencies, as well as interested members of the public. The Air Force is also pursuing government-to-government consultations with interested Native American tribes in accordance with requirements as articulated in the National Historic Preservation Act (NHPA).

The Draft EA is available on the internet at <https://www.mountainhome.af.mil/Home/Environmental-News/>. Copies of the Draft EA are available for review at the following locations:

- Mountain Home Public Library, 790 N 10th E Street, Mountain Home, Idaho 83647
- Mountain Home AFB Library, 480 5th Avenue, Building 2610, Mountain Home AFB, Idaho 83648
- Twin Falls Public Library, 201 4th Avenue E, Twin Falls, Idaho 83301

**Carlinda N. Lotson,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2019-07117 Filed 4-9-19; 8:45 am]

**BILLING CODE 5001-10-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2019-HQ-0002]

#### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Army, DoD.

**ACTION:** 30-day information collection notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by May 10, 2019.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

**FOR FURTHER INFORMATION CONTACT:** Angela James, 571-372-7574, or [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Exchange Application for Employment; Exchange Form 1200-718 and Exchange Form 1200-026; OMB Control Number 0702-0133.

*Type of Request:* Extension.

*Number of Respondents:* 99,000.

*Responses per Respondent:* 1.

*Annual Responses:* 99,000.

*Average Burden per Response:* 45 minutes.

*Annual Burden Hours:* 74,250 hours.

*Needs and Uses:* The information collection requirement is necessary to consider applicants for open Army & Air Force Exchange Service job opportunities. Data captured is essential in evaluating, ranking, and hiring the best, qualified individuals for enhancing the Exchange mission of providing services to United States Military Service Members.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, Docket ID number, and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DoD Clearance Officer:* Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: April 5, 2019.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2019-07116 Filed 4-9-19; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****TRICARE; Calendar Year (CY) 2019  
TRICARE Prime and TRICARE Select  
Out of Pocket Expenses**

**AGENCY:** Office of the Secretary,  
Department of Defense.

**ACTION:** Notice of Calendar Year (CY)  
2019 TRICARE Prime and TRICARE  
Select Out of Pocket Expenses.

**SUMMARY:** This notice provides the  
Calendar Year (CY) 2019 TRICARE  
Prime and TRICARE Select Out of  
Pocket Expenses.

**DATES:** The CY19 rates contained in this  
notice are effective for services on or  
after January 1, 2019, unless otherwise  
indicated.

**ADDRESSES:** Defense Health Agency  
(DHA), TRICARE Health Plan, 7700  
Arlington Boulevard, Suite 5101, Falls  
Church, Virginia 22042-5101.

**FOR FURTHER INFORMATION CONTACT:**  
Mark A. Ellis, telephone (703) 275-  
6234.

**SUPPLEMENTARY INFORMATION:** The  
National Defense Authorization Acts  
(NDAAs) for Fiscal Year (FY) 2012 and  
2017 established rates for TRICARE  
beneficiary out of pocket expenses and

how they may be increased by either the  
annual cost of living adjustment (COLA)  
percentage used to increase military  
retired pay or via budget neutrality  
rules. The FY 2019 retiree COLA  
increase is 2.8%. The “TRICARE Select  
and Other TRICARE Reforms” final rule  
(published February 15, 2019 at 84 FR  
4326-4333) allows for adjustments to  
beneficiary out of pocket expenses for  
Group A beneficiaries (sponsor enlisted  
or was commissioned in a Uniformed  
Service before January 1, 2018) to  
maintain budget neutrality compared to  
the previous year.

The DHA has updated the CY19 fees  
as shown below:

**TABLE 1—TRICARE PRIME AND TRICARE SELECT OUT OF POCKET EXPENSES FOR CY19—RETIREEES AND RETIREE  
FAMILY MEMBERS**

	Select Group A retirees CY19	Select Group B retirees CY19	Prime** Group A retirees CY19	Prime** Group B retirees CY19
Annual enrollment fee:				
Individual .....	\$0 .....	\$462 .....	\$297 .....	\$360.
Family .....	\$0 .....	\$924 .....	\$594 .....	\$720.
Annual Deductible:				
Individual .....	\$150 .....	\$154 (IN); \$308 (OON) .....	\$0 .....	\$0.
Family .....	\$300 .....	\$308 (IN); \$616 (OON) .....	\$0 .....	\$0.
Annual catastrophic cap .....	\$3,000 .....	\$3,598 .....	\$3,000 .....	\$3,598.
Preventive visit .....	\$0 .....	\$0 .....	\$0 .....	\$0.
Primary care .....	\$29 (IN) .....	\$25 (IN) .....	\$20 .....	\$20.
	25% (OON) .....	25% (OON) .....		
Specialty care .....	\$41 (IN) .....	\$41 (IN) .....	\$30 .....	\$30.
	25% (OON) .....	25% (OON) .....		
ER visit .....	\$111 (IN) .....	\$82 (IN) .....	\$61 .....	\$61.
	25% (OON) .....	25% (OON) .....		
Urgent care center visit .....	\$29 (IN) .....	\$41 (IN) .....	\$30 .....	\$30.
	25% (OON) .....	25% (OON) .....		
Ambulatory surgery .....	20% (IN) .....	\$97 (IN) .....	\$61 .....	\$61.
	25% (OON) .....	25% (OON) .....		
Ambulance, outpatient ground .....	\$102 (IN) .....	\$61 (IN) .....	\$41 .....	\$41.
	25% (OON) .....	25% (OON) .....		
Ambulance, outpatient air .....	25% (IN or OON) .....	25% (IN or OON) .....	\$20 .....	\$20.
Durable medical equipment .....	20% (IN) .....	20% (ON) .....	20% .....	20%.
	25% (OON) .....	25% (OON) .....		
Inpatient admission:				
In-network .....	\$250/day up to 25% of hospital charges, plus 20% of sep. billed services.	\$179 per adm .....	\$154 per adm .....	\$154 per adm.
Out of network .....	*\$953/day up to 25% of hosp. charges, plus 25% of sep. billed services.	25% .....	\$154 per adm .....	\$154 per adm.
Inpatient SNF/rehab facility .....	\$250/day up to 25% of hospital charges, plus 20% of sep. billed services (IN); 25% (OON).	\$51 per day (IN); lesser of \$308 per day or 20% (OON).	\$30 per day .....	\$30 per day.

IN: In Network.

OON: Out of Network.

\* Per day rate change effective October 1, 2018.

\*\* When TRICARE Prime enrollees other than active duty service members self-refer to specialty or non-emergent inpatient care without a referral from a network provider and/or authorization from the regional contractor, the TRICARE Point of Service deductible and copayment applies in lieu of TRICARE Prime copayments.

**TABLE 2—TRICARE PRIME AND TRICARE SELECT OUT OF POCKET EXPENSES FOR CY19—ACTIVE DUTY FAMILY  
MEMBERS**

	Select Group A ADFM CY19	Select Group B ADFM CY19	Prime ** Group A ADFM CY19	Prime ** Group B ADFM CY19
Annual enrollment fee:				
Individual .....	\$0 .....	\$0 .....	\$0	\$0

TABLE 2—TRICARE PRIME AND TRICARE SELECT OUT OF POCKET EXPENSES FOR CY19—ACTIVE DUTY FAMILY MEMBERS—Continued

	Select Group A ADFM CY19	Select Group B ADFM CY19	Prime ** Group A ADFM CY19	Prime ** Group B ADFM CY19
Family .....	\$0 .....	\$0 .....	0	0
Annual Deductible:				
E1–E4, individual .....	\$50 .....	\$51 .....	0	0
E1–E4, family .....	\$100 .....	\$102 .....	0	0
E5 & above, individual .....	\$150 .....	\$154 .....	0	0
E5 & above, family .....	\$300 .....	\$308 .....	0	0
Annual catastrophic cap .....	\$1,000 .....	\$1,028 .....	1,000	1,028
Preventive visit .....	\$0 .....	\$0 .....	0	0
Primary care .....	\$21 (IN) .....	\$15 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
Specialty care .....	\$31 (IN) .....	\$25 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
ER visit .....	\$83 (IN) .....	\$41 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
Urgent care center visit .....	\$21 (IN) .....	\$20 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
Ambulatory surgery .....	\$25 (IN) .....	\$25 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
Ambulance, outpatient ground ..	\$76 (IN) .....	\$15 (IN) .....	0	0
	20% (OON) .....	20% (OON) .....		
Ambulance, outpatient air .....	20% (IN or OON) .....	20% (IN or OON) .....	0	0
Durable medical equipment .....	15% (IN) .....	10% (ON) .....	0	0
	20% (OON) .....	20% (OON) .....		
Inpatient admission .....	*\$19.05 per day; \$25 min. per admission.	\$61 per adm. (IN); 20% (OON)	0	0
Inpatient SNF/rehab facility .....	*\$19.05 per day; \$25 min. per admission.	\$25 per day (IN); \$51 per day (OON).	0	0

IN: In Network.

OON: Out of Network.

\*Per day rate change effective October 1, 2018.

\*\* When TRICARE Prime enrollees other than active duty service members self-refer to specialty or non-emergent inpatient care without a referral from a network provider and/or authorization from the regional contractor, the TRICARE Point of Service deductible and copayment applies in lieu of TRICARE Prime copayments.

The above rates are effective for services rendered on or after January 1, 2019 unless otherwise indicated.

Dated: April 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-07067 Filed 4-9-19; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2019-OS-0037]

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Rescinding of a system of records notice.

**SUMMARY:** The Defense Finance and Accounting Service is rescinding a system of records, T7901b, Consolidated Returned Items Stop Payment System. This system of records assisted in the processing and tracking of military pay returned checks for the active U.S.

Army and Reserve military members. The Consolidated Returned Items Stop Payment System (CRISPS) is no longer in use and is considered deactivated.

**DATES:** This action will be effective April 10, 2019. The specific date for when this system ceased to be a Privacy Act System of Records is February 22, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory L. Outlaw, DFAS Privacy Officer, Defense Finance and Accounting Service, Corporate Communications Office, FOIA/PA Adherence Division, 8899 East 56th St., Indianapolis, IN 46249-3300, (317) 212-4591.

**SUPPLEMENTARY INFORMATION:** The Consolidated Returned Items Stop Payment System (CRISPS) is no longer in use and is considered deactivated. All CRISPS customers successfully migrated to the system of records, T7320a, Deployable Disbursing System. The system of records notice for the Deployable Disbursing System is at 78 FR 14286 (March 5, 2013) and 72 FR 30785 (June 4, 2007). Department of Defense system of records notices subject to the Privacy Act of 1974 (5

U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division website at <http://dpcl.d.defense.gov/>. The proposed systems reports, as required by the Privacy Act of 1974, as amended, were submitted on January 15, 2019, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and on February 13, 2019, to the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," revised December 23, 2016 (December 23, 2016, 81 FR 94424).

**System Name and Number**  
Consolidated Returned Items Stop Payment System (CRISPS), T7901b

#### HISTORY

May 28, 2013, 78 FR 31905.

Dated: April 4, 2019.

Aaron T. Siegel,

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 2019-07032 Filed 4-9-19; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Publication of Housing Price Inflation Adjustment

**AGENCY:** Office of the Under Secretary (Personnel and Readiness), DoD.

**ACTION:** Notice of housing price inflation adjustment.

**SUMMARY:** The Department of Defense is announcing the 2019 rent threshold under the Servicemembers Civil Relief Act. Applying the inflation adjustment for 2018, the maximum monthly rental amount as of January 1, 2019, will be \$3851.03.

**DATES:** These housing price inflation adjustments are effective January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Ryan Hendricks, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 571-9301.

**SUPPLEMENTARY INFORMATION:** The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of \$2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. Applying the inflation adjustment for 2018, the maximum monthly rental amount for 50 U.S.C. App. 3951 (a)(1)(A)(ii) as of January 1, 2019, will be \$3851.03.

Dated: April 5, 2019.

Aaron T. Siegel,

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 2019-07111 Filed 4-9-19; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2019-HQ-0014]

#### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Rescindment of a system of records notice.

**SUMMARY:** The Department of the Army is rescinding a system of records notice, Uniformed Services Identification Card, A0600-8-14 AHRC. These files are covered by the DoD wide system of records notice, Defense Enrollment Eligibility Reporting Systems (DEERS), DMDC 02 DoD.

**DATES:** This action will be effective April 10, 2019. The specific date for when this system ceased to be a Privacy Act System of Records is June 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325-3905 or by phone at (703) 428-7499.

**SUPPLEMENTARY INFORMATION:** Based on a recent review of A0600-8-14 AHRC, Uniformed Services Identification Card, it has been determined the records are covered under and are maintained in accordance with DMDC 02 DoD, Defense Enrollment Eligibility Reporting Systems (DEERS) (July 27, 2016, 81 FR 49210), a DoD-wide system notice and this system of records is duplicative.

The Department of the Army systems of records notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at <http://dpcl.d.defense.gov/privacy>. The proposed systems reports, as required by the Privacy Act of 1974, as amended, were submitted on February 6, 2019, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," revised December 23, 2016 (December 23, 2016, 81 FR 94424).

#### SYSTEM NAME AND NUMBER:

Uniformed Services Identification Card, A0600-8-14 AHRC.

#### HISTORY:

March 27, 2013, 78 FR 18570.

Dated: April 5, 2019.

Aaron T. Siegel,

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

[FR Doc. 2019-07065 Filed 4-9-19; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2019-ICCD-0043]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Native American Career and Technical Education Program

**AGENCY:** Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before May 10, 2019.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2019-ICCD-0043. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202-0023.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Braden Goetz, 202-245-7405.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in



accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** Application for Native American Career and Technical Education Program.

**OMB Control Number:** 1830-0542.

**Type of Review:** An extension of an existing information collection.

**Respondents/Affected Public:** Private Sector.

**Total Estimated Number of Annual Responses:** 37.

**Total Estimated Number of Annual Burden Hours:** 2,827.

**Abstract:** There is an increase in burden hours because the U.S. Department of Education expects to initiate a new grant competition in 2021.

Dated: April 4, 2019.

**Kate Mullan,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019-07029 Filed 4-9-19; 8:45 am]

**BILLING CODE 4000-01-P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Meetings

**ACTION:** Notice of Second Public Hearing on Voluntary Voting System Guidelines 2.0 Principles and Guidelines.

**TIME AND DATE:** The meeting will be held on Wednesday, April 23, 2019, from 3:00 p.m. until 6:00 p.m., MDT.

**PLACE:** Salt Lake Marriott Downtown at City Creek, 75 SW Temple, Salt Lake City, UT 84101. 801-531-0800. The meeting will also be streamed on [www.eac.gov](http://www.eac.gov).

**STATUS:** This Hearing will be open to the public.

**HEARING AGENDA:** The Commission will conduct a public hearing to receive testimony and public comments on the proposed Voluntary Voting System Guidelines 2.0 Principles and Guidelines (VVSG 2.0). The full hearing agenda will be posted in advance at <http://www.eac.gov>. Members of the public who wish to speak at the hearing regarding the VVSG 2.0 Principles and Guidelines may send a request to participate to the EAC via email at [votingssystemguidelines@eac.gov](mailto:votingssystemguidelines@eac.gov) by 5:00 p.m. EDT Friday, April 19, 2019.

Members of the public may also sign up at the public meeting as long as they do so before the public hearing begins. Due to time constraints, the EAC can select no more than ten participants amongst the volunteers who request to participate. The selected volunteers will be allotted five-minutes each to share their viewpoint. Participants will be selected on a first-come, first-served basis. However, to maximize diversity of input, only one participant per organization or entity will be chosen if necessary. Participants may also submit written testimony to be included in the record. All requests must include a description of what will be said, contact information that will be used to notify the requestor with status of request (phone number on which a message may be left or email), and include the subject/attention line (or on the envelope if by mail): Testimony on proposed VVSG 2.0 Principles and Guidelines. Please note that these testimonies will be made available to the public at [www.eac.gov](http://www.eac.gov). Written testimony from members of the public regarding the proposed VVSG 2.0 Principles and Guidelines will also be accepted. Testimony will be included as part of the written record of the hearing, and it will be available on our website. Written testimony must be submitted before the end of the public hearing and, if by mail, received by 5:00 p.m. EDT on April 19, 2019. Written testimony should be submitted via email at [votingssystemguidelines@eac.gov](mailto:votingssystemguidelines@eac.gov) or via mail addressed to the U.S. Election Assistance Commission, 1335 East-West Highway, Suite 4300, Silver Spring, Maryland 20910, or by fax at 301-734-3108. All correspondence that contains

written testimony must have in the subject/attention line (or on the envelope if by mail): Written testimony on proposed VVSG 2.0 Principles and Guidelines.

**Clifford D. Tatum,**

*General Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2019-07150 Filed 4-8-19; 11:15 am]

**BILLING CODE 6820-KF-P**

## DEPARTMENT OF ENERGY

[FE Docket No. 19-28-LNG]

### Chevron U.S.A. Inc.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on March 5, 2019, by Chevron U.S.A. Inc. (Chevron U.S.A.), requesting blanket authorization to export liquefied natural gas (LNG) previously imported into the United States from foreign sources in an amount up to the equivalent of 72 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on March 29, 2019 or as soon thereafter as the authorization is granted. The LNG would be exported from the Sabine Pass LNG Terminal owned by Sabine Pass LNG, L.P., in Cameron Parish, Louisiana, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Chevron U.S.A. states that it has contracted for 1.0 Bcf/day of terminal capacity from Sabine Pass LNG, L.P., for an initial term of 20 years that will expire June 30, 2029, with the option to extend the term for another 20 years. Chevron U.S.A. states that it does not seek authorization to export domestically-produced natural gas supplies, and notes that it is authorized in DOE/FE Order No. 4208 to import the equivalent of up to 800 Bcf of natural gas from various international sources by vessel for a two-year period beginning on August 1, 2018, and extending through July 31, 2020. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Chevron U.S.A.'s Application, posted on the DOE/FE website at: <https://www.energy.gov/sites/prod/files/2019/03/f60/19-28-LNG.pdf>.

Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, May 10, 2019.

**ADDRESSES:**

Electronic Filing by email: *fergas@hq.doe.gov*.

*Regular Mail:* U.S. Department of Energy (FE-34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

*Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.):* U.S. Department of Energy (FE-34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Howard or Larine Moore, U.S. Department of Energy (FE-34), Office of Regulation, Analysis and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9387; (202) 586-9478.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586-9793.

**SUPPLEMENTARY INFORMATION:**

**DOE/FE Evaluation**

The Application will be reviewed pursuant to section 3 of the NGA, 15 U.S.C. 717b. In reviewing this Application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this

proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov*, with FE Docket No. 19-28-LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19-28-LNG. Please Note: If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party

requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>.

Signed in Washington, DC, on April 4, 2019.

**Amy R. Sweeney,**

*Director, Division of Natural Gas Regulation, Office of Fossil Energy.*

[FR Doc. 2019-07081 Filed 4-9-19; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Number:* PR19-53-000.  
*Applicants:* Salt Plains Storage, LLC.  
*Description:* Tariff filing per 284.123(b),(e)+(g): Salt Plains Revised SOC to be effective 4/1/2019.

*Filed Date:* 4/1/19.  
*Accession Number:* 201904015149.  
*Comments Due:* 5 p.m. ET 4/22/19.  
*284.123(g) Protests Due:* 5 p.m. ET 5/31/19.

*Docket Number:* PR19-41-001.  
*Applicants:* Altus Midstream Pipeline LP.

*Description:* Tariff filing per 284.123(b),(e)+(g): Amendment to Notice of Name Change and Revised Statement of Operating Conditions to be effective 2/14/2019.

*Filed Date:* 3/29/19.  
*Accession Number:* 201903295452.  
*Comments Due:* 5 p.m. ET 4/19/19.  
*284.123(g) Protests Due:* 5 p.m. ET 4/23/19.

*Docket Numbers:* RP19-1100-000.  
*Applicants:* HG Energy II Appalachia, LLC, Diversified Gas & Oil Corporation.

*Description:* Joint Petition for Limited Transaction-Specific Waivers of Commission Policies, Capacity Release Regulations and Tariff Provisions, et al. of HG Energy II Appalachia, LLC, et al. under RP19–1100.

*Filed Date:* 4/1/19.

*Accession Number:* 20190401–5655.

*Comments Due:* 5 p.m. ET 4/8/19.

*Docket Numbers:* RP19–1105–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: Superseding Negotiated Rate Agreement (CIMA 37856) to be effective 4/1/2019.

*Filed Date:* 4/3/19.

*Accession Number:* 20190403–5054.

*Comments Due:* 5 p.m. ET 4/15/19.

*Docket Numbers:* RP19–1106–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* § 4(d) Rate Filing: Removal of Expired Agreements—to be effective 5/6/2019.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404–5000.

*Comments Due:* 5 p.m. ET 4/16/19.

*Docket Numbers:* RP19–1107–000.

*Applicants:* No Applicants listed for this docket/subdocket.

*Description:* Compliance filing Annual Report of Flow Through filed 4–4–19 to be effective N/A.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404–5011.

*Comments Due:* 5 p.m. ET 4/16/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2019.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2019–07087 Filed 4–9–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Athos, LLC .....	EG19–46–000
Athos II, LLC .....	EG19–47–000
Terra-Gen CA Windpower Development, LLC.	EG19–48–000
41MB 8ME, LLC .....	EG19–49–000
Innolith Snook LLC .....	EG19–50–000
Cedar River Transmission, LLC.	EG19–51–000
Crystal Lake Wind Energy I, LLC.	EG19–52–000
Crystal Lake Wind Energy II	EG19–53–000
Ronaver Energy Limited .....	FC19–2–000

Take notice that during the month of March 2019, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: April 4, 2019.

**Nathaniel J. Davis, Sr.,**

Deputy Secretary.

[FR Doc. 2019–07084 Filed 4–9–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC19–19–000]

#### Commission Information Collection Activities (FERC–542); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of information collection and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–542 (Gas Pipeline Rates: Rate Tracking).

**DATES:** Comments on the collection of information are due June 10, 2019.

**ADDRESSES:** You may submit comments (identified by Docket No. IC19–19–000) by either of the following methods:

• eFiling at Commission's website:

<http://www.ferc.gov/docs-filing/efiling.asp>

• Mail/Hand Delivery/Courier:

Federal Energy Regulatory Commission,

Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance, contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

#### FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), telephone at (202) 502–8663, and fax at (202) 273–0873.

#### SUPPLEMENTARY INFORMATION:

*Title:* FERC–542, Gas Pipelines Rates: Rate Tracking.

*OMB Control No.:* 1902–0070.

*Type of Request:* Three-year extension of the FERC–542 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The information collected by FERC–542 is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and sections 4, 5 and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w). These statutes allow the Commission to collect natural gas transmission cost information from interstate natural gas pipelines for the purpose of verifying that these costs, which are passed on to customers, are just and reasonable.

Natural gas pipelines are required by the Commission to track their transportation costs to allow for the Commission's review and, where appropriate, approve the pass-through of these costs to pipeline customers. FERC–542 accounts for costs involving: (1) Research, development, and deployment expenditures; (2) annual charge adjustments; and (3) periodic rate adjustments.

FERC–542 filings may be submitted at any time or on a regularly scheduled basis in accordance with the pipeline company's tariff. Filings may be either: (1) Accepted; (2) suspended and set for hearing; (3) minimal suspension; or (4) suspended for further review, such as technical conference or some other type of Commission action.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 154, 154.107, 154.4, 154.7, 154.201, and 154.401–154.403.

*Type of Respondents:* Jurisdictional Natural Gas Pipelines.

*Estimate of Annual Burden:*<sup>1</sup> The Commission estimates the total burden

and cost for this information collection as follows:

**FERC-542 (GAS PIPELINE RATES: RATE TRACKING)**

FERC data collection	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden hours & cost per respondent (4) <sup>2</sup>	Total annual burden hours & total annual cost (rounded) (3)*(4) = (5)	Cost (\$) per respondent (rounded) (5)÷(1)
FERC-542 .....	90	2	180	2 hrs; \$158	360 hrs; \$28,440	\$158
Total .....	.....	.....	.....	.....	360 hrs; \$28,440	

<sup>2</sup> FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2018 FERC average annual salary plus benefits (\$164,820/year or \$79/hour).

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 3, 2019.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2019-07042 Filed 4-9-19; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC10-51-003.

*Applicants:* T. Rowe Price Group, Inc.

*Description:* T. Rowe Price Group, Inc., et al. submits Request for Reauthorization and Extension of Blanket Authorizations to Acquire and Dispose of Securities under Section 203 of the Federal Power Act.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5143.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* EC19-18-000.

*Applicants:* Entergy Services, LLC, Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, LLC, Entergy Texas, Inc.

*Description:* Response to March 14, 2019 Deficiency Letter, et al. of Entergy Services, LLC on behalf of itself and affiliated Entergy Operating Companies.

*Filed Date:* 4/3/19.

*Accession Number:* 20190403-5111.

*Comments Due:* 5 p.m. ET 4/24/19.

*Docket Numbers:* EC19-71-000.

*Applicants:* PPL Electric Utilities Corporation.

*Description:* Supplement to March 25, 2019 Application for Authorization Under Section 203 of the Federal Power Act of PPL Electric Utilities Corporation.

*Filed Date:* 4/3/19.

*Accession Number:* 20190403-5105.

*Comments Due:* 5 p.m. ET 4/15/19.

*Docket Numbers:* EC19-74-000.

*Applicants:* Entergy Texas, Inc.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Entergy Texas, LLC.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5140.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* EC19-75-000.

*Applicants:* Osceola Windpower II, LLC, Endeavor Wind II, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of Osceola Windpower II, LLC, et al.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5161.

*Comments Due:* 5 p.m. ET 4/25/19.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14-225-005.

*Applicants:* New Brunswick Energy Marketing Corporation.

*Description:* Notice of Non-Material Change in Status of New Brunswick Energy Marketing Corporation.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5155.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* ER19-836-003.

*Applicants:* El Paso Electric Company.

*Description:* Tariff Amendment: Service Agreement No. 315, EDF PTP to be effective 5/18/2019.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5069.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* ER19-1014-001.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

*Description:* Tariff Amendment: 2019-04-04 SA 3244 Ameren Illinois-Marathon CFA (Heath Substation) Amendment to be effective 1/8/2019.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5105.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* ER19-1517-000.

*Applicants:* Shoreham Solar Commons Holdings LLC.

*Description:* Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 6/4/2019.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5036.

*Comments Due:* 5 p.m. ET 4/25/19.

*Docket Numbers:* ER19-1518-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original ICSA, SA No. 4950; Queue No. AB2-089 to be effective 2/12/2018.

*Filed Date:* 4/4/19.

*Accession Number:* 20190404-5038.

<sup>1</sup> Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information

to or for a Federal agency. For further explanation of what is included in the information collection

burden, refer to Title 5 Code of Federal Regulations 1320.3.

*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1519–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* § 205(d) Rate Filing: 2019–04–04 SA 1524 I&M–NIPSCO Interconnection Agreement 2nd Rev to be effective 12/3/2018.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5039.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1520–000.  
*Applicants:* Sunflower Electric Power Corporation, Southwest Power Pool, Inc.  
*Description:* § 205(d) Rate Filing: Sunflower and Mid-Kansas Formula Rate Revisions to Modify Depreciation Rates to be effective 1/1/2018.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5053.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1521–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Amendment to WMPA SA No. 3355; Queue No. W3–044 to be effective 2/4/2014.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5058.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1522–000.  
*Applicants:* Alabama Power Company.  
*Description:* § 205(d) Rate Filing: Kruger Energy Crawford LGIA Filing to be effective 3/28/2019.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5088.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1523–000.  
*Applicants:* AEP Texas Inc.  
*Description:* § 205(d) Rate Filing: AEPTX-Taygete Energy Project Interconnection Agreement First Amend & Restated to be effective 3/13/2019.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5142.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1524–000.  
*Applicants:* Northern Indiana Public Service Company.  
*Description:* § 205(d) Rate Filing: Filing of a CIAC Agreement to be effective 4/5/2019.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5145.  
*Comments Due:* 5 p.m. ET 4/25/19.  
*Docket Numbers:* ER19–1525–000.  
*Applicants:* AEP Texas Inc.  
*Description:* § 205(d) Rate Filing: AEPTX-Taylor EC-Golden Spread EC IA Third Amend & Restated to be effective 3/13/2019.  
*Filed Date:* 4/4/19.  
*Accession Number:* 20190404–5154.  
*Comments Due:* 5 p.m. ET 4/25/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 4, 2019.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2019–07086 Filed 4–9–19; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. OR19–19–000]

#### Notice of Petition for Declaratory Order: Grand Prix Pipeline LLC

Take notice that on April 2, 2019, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2018), Grand Prix Pipeline LLC (Grand Prix) filed a petition for a declaratory order seeking approval of the specific structure, terms of service, and prorationing methodology for a new committed interstate transportation service on its pipeline system that Grand Prix is modifying and extending to transport volumes of mixed natural gas liquids (NGL) in interstate commerce from an interconnection point in Texas to NGL storage facilities at the storage, fractionation, and marketing hub of Mont Belvieu, Texas, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on May 2, 2019.

Dated: April 3, 2019.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2019–07041 Filed 4–9–19; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0410; FRL–9990–58]

### Certain New Chemicals; Receipt and Status Information for November 2018

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing

exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 11/01/2018 to 11/30/2018.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before May 10, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0410, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 11/01/2018 to 11/30/2018. The Agency is providing notice of receipt of PMNs,

SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

###### B. What is the Agency's authority for taking this action?

Under the TSCA, 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment.

This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchems>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

###### C. Does this action apply to me?

This action provides information that is directed to the public in general.

###### D. Does this action have any incremental economic impacts or paperwork burdens?

No.

###### E. What should I consider as I prepare my comments for EPA?

1. **Submitting confidential business information (CBI).** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the

**Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals->

*under-toxic-substances-control-act-tsca/status-pre-manufacture-notices*. This information is updated on a weekly basis.

### III. Receipt Reports

For the PMN/SNUN/MCANs received by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices received by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information

in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.* P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier versions were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs RECEIVED FROM 11/01/2018 TO 11/30/2018

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-19-0006 .....	1	11/16/2018	Danisco US, Inc ...	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J-19-0007 .....	1	11/16/2018	Danisco US, Inc ...	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J-19-0008 .....	1	11/16/2018	Danisco US, Inc ...	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
J-19-0009 .....	3	11/21/2018	CBI .....	(G) Production of basic nitrogen-containing acid.	(G) Microorganism producing basic nitrogen-containing acid.
J-19-0010 .....	3	11/21/2018	CBI .....	(G) Production of basic nitrogen-containing acid.	(G) Microorganism producing basic nitrogen-containing acid.
P-18-0377 .....	3	11/16/2018	CBI .....	(G) microelectronic use .....	(G) N,N-Bis (haloalkylsubstituted) sulfamide.
P-18-0385 .....	2	11/14/2018	Colonial Chemical, Inc.	(S) Liquid Laundry .....	(S) D-Glucopyranose, oligomeric, Bu glycosides, polymers with epichlorohydrin, 2-hydroxy-3-sulfopropyl ethers, sodium salts.
P-19-0001 .....	2	11/1/2018	Burgess Pigment Company.	(G) Filler for plastic .....	(G) Aluminum silicate clay treated with siloxane (vinyl functionality).
P-19-0012 .....	4	11/8/2018	CBI .....	(S) Resin component for the polyisocyanurate (S) Resin component in specialty polyurethane kits and systems for aerospace and military applications.	(G) Benzenedicarboxylic acid, polymer with isobenzofurandione and oxybis [ethanol].
P-19-0012 .....	5	11/26/2018	CBI .....	(S) Resin component for the polyisocyanurate. (S) Resin component in specialty polyurethane kits and systems for aerospace and military applications.	(G) Benzenedicarboxylic acid, polymer with isobenzofurandione and oxybis [ethanol].
P-19-0013 .....	2	11/15/2018	CBI .....	(S) Surfactant for use in asphalt emulsions.	(G) Alkyl Cyclic Amide.
P-19-0014 .....	2	11/5/2018	CBI .....	(S) Emulsifier for use in asphalt applications.	(G) Alkyl Cyclic Amide Chloride.
P-19-0015 .....	2	11/15/2018	CBI .....	(S) Emulsifier for use in asphalt applications.	(G) Alkyl Cyclic Amide.
P-19-0016 .....	2	11/15/2018	CBI .....	(S) Emulsifier for use in asphalt applications.	(G) Alkyl Cyclic Amide Chloride.
P-19-0017 .....	2	11/15/2018	CBI .....	(S) Emulsifier for use in asphalt applications.	(G) Alkyl Amide Alcohol.
P-19-0018 .....	2	11/15/2018	CBI .....	(S) Emulsifier for use in asphalt applications.	(G) Alkyl Amide Alcohol Chloride.
P-19-0019 .....	1	11/8/2018	CBI .....	(G) Intermediate .....	(G) Haloalkane.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 11/01/2018 TO 11/30/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-19-0020 .....	1	11/8/2018	CBI .....	(G) Lubricating oil additive .....	(G) Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs.
P-19-0021 .....	1	11/9/2018	Nippon Kayaku America, Inc.	(G) Pigment ink .....	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkylene carbonate, alkanediol, isocyanate, compd. with alkylamine.
P-19-0022 .....	1	11/9/2018	Nippon Kayaku America, Inc.	(G) Pigment ink .....	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkyl carbonate, alkanediol, isocyanate, compd. with alkylamine.
P-19-0023 .....	1	11/16/2018	Allnex USA, Inc ...	(S) Powder coating resin for industrial application.	(G) Substituted carbomonocycle, polymer with substituted carbomonocycles, dialkyl-alkanediol, alkyl-hydroxyalkyl-alkanediol and alkanedioic acid.
P-19-0024 .....	1	11/16/2018	Sales and Distribution Services, Inc.	(S) Hot Mix Asphalt Application, (S) Waterproofing Application, (S) Asphalt Emulsion Application.	(S) 1-Octadecanaminium, N,N-dimethyl-N-[3-(trimethoxysilyl)propyl]-, chloride (1:1), reaction products with water, Trimethoxy(propyl) silane, Trimethoxy(methyl)silane, Tetraethyl orthosilicate and ethane-1,2-diol.
P-19-0025 .....	1	11/19/2018	Bercen, Inc .....	(G) Hydrophobe formulation .....	(S) 11-Docosene.
P-19-0026 .....	1	11/27/2018	Allnex USA, Inc ...	(S) The PMN substance is an isolated intermediate incorporated as a component in several allnex coating resin products used as additives for corrosion protection.	(G) Alkanolic acid, compds. with substituted carbomonocycle-dialkyl-alkanediamine-halosubstituted heteromonocycle-polyalkylene glycol polymer-dialkanolamine reaction products.
P-19-0027 .....	1	11/28/2018	Allnex USA, Inc ...	(S) The PMN substance is a component in several allnex coating resin products used as additives for corrosion protection.	(G) Substituted Carbomonocycle, polymer with haloalkyl substituted heteromonocycle, dialkyl-alkanediamine and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], reaction products with metal oxide and dialkanolamine, acetates (salts).
P-19-0028 .....	3	11/30/2018	CBI .....	(G) Lubricating oil additive .....	(G) Alkyl salicylate, metal salts.
P-19-0029 .....	1	11/29/2018	Cytec Industries, Inc.	(G) Catalyst .....	(S) Phosphonium, tributylethyl-, diethyl phosphate (1:1).

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case

number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the

submitter in the NOC, a notation of the type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs RECEIVED FROM 11/01/2018 TO 11/30/2018

Case No.	Received date	Commencement date	If Amendment, type of amendment	Chemical substance
P-08-0175 .....	11/06/2018	05/17/2008	.....	(S) Hexanedioic acid, polymer with 1,4-butanediol, dimethyl carbonate, 1,2-ethanediol, 1,6-hexanediol and 1,1'-methylenebis[4-isocyanatobenzene]*.
P-11-0069 .....	11/06/2018	06/06/2011	.....	(G) Dispersible isocyanate crosslinker.
P-13-0231 .....	11/08/2018	10/16/2018	.....	(G) Alkylmethacrylate polymer, with alkyl acrylate, aromatic vinyl monomer and alkyl acrylate.
P-14-0510 .....	11/26/2018	05/15/2015	.....	(S) Amides, vegetable-oil, n,n-bis(hydroxyethyl), reaction products with maleic anhydride and sodium sulfite (2:1).
P-16-0462A .....	11/02/2018	07/26/2018	To submit a revised generic name.	(G) Ash (residues), reaction products with tetraethoxydioxo-polyheteroatom-disilaalkane.
P-16-0484 .....	11/06/2018	10/17/2018	.....	(G) Phosphoric acid, metal salt, compd. w/substituted aromatic heterocycle.
P-17-0215 .....	11/21/2018	11/19/2018	.....	(S) 2-butenedioic acid (2z)-, 1,4-dibutyl ester, polymer with 1-hexadecene and 1-tetradecene.



TABLE II—NOCs RECEIVED FROM 11/01/2018 TO 11/30/2018—Continued

Case No.	Received date	Commence- ment date	If Amendment, type of amendment	Chemical substance
P-17-0270 .....	11/14/2018	10/19/2018	.....	(G) Alkyl perfluorinated acryloyl ester.
P-17-0278 .....	11/06/2018	10/25/2018	.....	(G) Fatty acid derived imidazoline salts.
P-18-0070 .....	11/08/2018	11/05/2018	.....	(G) Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids.
P-18-0102 .....	11/09/2018	11/08/2018	.....	(G) Alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkenoic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt.
P-18-0134 .....	11/09/2018	11/07/2018	.....	(S) Benzene, 1-(chloromethyl)-3-methyl-.
P-18-0231 .....	11/11/2018	11/09/2018	.....	(G) Alkenoic acid, substituted alkyl-, polymer with isocyanatoalkane, alkyl carbonate, alkanediol and polyalkylene glycol ether with alkyl(substituted alkyl) alkanediol alkenoate, glycerol monoacrylate alkenoate-blocked.

In Table III. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information received

by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 11/01/2018 TO 11/30/2018

Case No.	Received date	Type of test information	Chemical substance
P-18-0293 .....	11/01/2018	<i>In vitro</i> mammalian chromosome aberration test (OECD 473).	(S) propanedioic acid, 2-methylene-, 1,3-dihexyl ester.
P-18-0294 .....	11/01/2018	<i>In vitro</i> mammalian chromosome aberration test (OECD 473).	(S) propanedioic acid, 2-methylene-, 1,3-dicyclohexyl ester.
P-11-0483 .....	11/02/2018	Avian reproduction test (OECD 206) .....	(G) alkyl thiol.
P-18-0128 .....	11/02/2018	Acute dermal irritation test (OECD 404), Acute eye irritation test (OECD 405), Inherent biodegradation test (OECD 302C).	(S) inulin, 2-hydroxy-3-(trimethylammonio)propyl ether, chloride.
P-18-0350 .....	11/05/2018	NMR test .....	(G) aqueous methacrylamido modified polysiloxane.
P-11-0557 .....	11/05/2018	Annual import volume (Certificate of Analysis) .....	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C18-26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate and vinylidene chloride, 2,2'-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole] hydrochloride (1:2)-initiated.
P-12-0242 .....	11/05/2018	Annual import volume (Certificate of Analysis) .....	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, telomers with C18-26-alkyl acrylate, 1-dodecanethiol, N-(hydroxymethyl)-2-methyl-2-propenamide, polyfluorooctyl methacrylate, 2,2'-[1,2-diazenediylbis(1-methylethylidene)]bis[4,5-dihydro-1H-imidazole] hydrochloride (1:2)-initiated.
P-16-0446 .....	11/07/2018	Acute inhalation irritation (OECD 403) .....	(G) fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkenoate, lactates (salts).
SN-17-0011 .....	11/08/2018	Reproductive and fertility effects test (OECD 416) ....	(G) polyfluorohydrocarbon.
P-16-0543 .....	11/14/2018	Exposure monitoring report .....	(G) halogenophosphoric acid metal salt.
P-17-0253 .....	11/15/2018	Tier 2 inhalation toxicology test (OECD 412) .....	(G) oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether.
P-19-0019 .....	11/20/2018	Bacterial reverse mutation test (OECD 471) .....	(G) haloalkane.
P-11-0063 .....	11/23/2018	Anaerobic Transformation in Soil (OECD 307) .....	(G) perfluoroalkyl acrylate copolymer.
P-14-0712 .....	11/26/2018	PCCD/F EPA Test Method 8290A .....	(G) plastics, wastes, pyrolyzed, C5-55 fraction.
P-17-0195 .....	11/28/2018	Combined Repeated Dose Toxicity Study (OECD 422), Unscheduled DNA Synthesis (OECD 486).	(G) 1,3-Propanediol, 2-methylene- substituted.
P-17-0345 .....	11/28/2018	Bovine Corneal Opacity and Permeability (BCOP) (OECD 437).	(G) Polyurethane, methacrylate blocked.

If you are interested in information that is not included in these tables, you may contact EPA's technical

information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to

access additional non-CBI information that may be available.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: March 7, 2019.

**Pamela Myrick,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 2019-07078 Filed 4-9-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2019-0075; FRL-9991-20]

### Certain New Chemicals; Receipt and Status Information for January 2019

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 01/01/2019 to 01/31/2019.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before May 10, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2019-0075, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental

Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 01/01/2019 to 12/31/2019. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

###### B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's

TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchemicals>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

###### C. Does this action apply to me?

This action provides information that is directed to the public in general.

###### D. Does this action have any incremental economic impacts or paperwork burdens?

No.

*E. What should I consider as I prepare my comments for EPA?*

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing

notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

## III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI

claim) on the notices screened during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.* P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED\* FROM 01/01/2019 TO 01/31/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-19-0012 .....	1	1/14/2019	CBI .....	(G) Ethanol Production .....	(G) Biofuel producing <i>Saccharomyces cerevisiae</i> modified, genetically stable.
J-19-0013 .....	1	1/14/2019	CBI .....	(G) Ethanol Production .....	(G) Biofuel producing <i>Saccharomyces cerevisiae</i> modified, genetically stable.
J-19-0014 .....	1	1/14/2019	CBI .....	(G) Ethanol Production .....	(G) Biofuel producing <i>Saccharomyces cerevisiae</i> modified, genetically stable.
J-19-0015 .....	1	1/14/2019	CBI .....	(G) Ethanol Production .....	(G) Biofuel producing <i>Saccharomyces cerevisiae</i> modified, genetically stable.
P-19-0031 .....	2	12/28/2018	CBI .....	(S) Curing agent for epoxy coating systems	(G) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with formaldehyde, 2-(chloromethyl)oxirane, alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), and polyamines.
P-19-0032 .....	3	12/19/2018	Presidium USA, Inc.	(G) Polyol used in the manufacture of articles made of a polyurethane thermoset material.	(G) Carbonic dichloride, polymer with 4,4'-(1-methylethylidene)bis[phenol] ester, polymer with tetrol and polyether tetrol.
P-19-0045 .....	1	12/21/2018	CBI .....	(G) Component of textile coating .....	(G) Non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized.
P-19-0046 .....	1	1/2/2019	Kluber Lubrication North America L.P.	(G) Lubricating agent .....	(G) Aromatic polycarboxylic acid, alkyl (C <sub>8</sub> -C <sub>10</sub> ) esters.
P-19-0047 .....	1	1/2/2019	US Polymers Accurez LLC.	(S) Binder for Thermoplastic Coatings .....	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1'-methylenebis[4-isocyanatobenzene].

\*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information received

by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE II—TEST INFORMATION RECEIVED FROM 01/01/2019 TO 01/31/2019

Case No.	Received date	Type of test information	Chemical substance
P-00-0281 ....	12/4/2018	Fish Acute Toxicity (OECD 203) .....	(G) Alkarylsulfonic acid, sodium salts.
		Invertebrate Acute Toxicity (Fathead minnows), .....	
		Algae Toxicity (Raphidocelis subcapitata) .....	
SN-17-0011 ..	12/4/2018	Whole Body (Inhalation) 2 Generation Reproductive Toxicity Study and Work Place Air Monitoring and Exposure Modeling Study.	(G) Polyfluorohydrocarbon.
P-87-1436 ....	12/6/2018	QSAR Assessment Report on Vinyl Laurate; Skin Sensitization: Local Lymph Node Assay (OECD TG 429); Repeated Dose 90-Day Oral Toxicity in Rodents (OECD TG 408); Repeated Dose Toxicity and Repro/Devel Toxicity Screening (OECD TG 422); Chromosome Aberration Test (OECD TG 473); Gene Mutation Assay (OECD TG 476); Micro-nucleus Test (OECD TG 474); Prenatal Developmental Toxicity Study (OECD TG 414); Aquatic Toxicity—Daphnia (OECD TG 202); Aquatic Toxicity—Daphnia Reproductive (OECD TG 211); Aquatic Toxicity—Algal Growth (OECD TG 201); Ready Biodegradability (OECD TG 301); Dermal Irritation/Corrosion (OECD TG 404); Bacterial Reverse Mutation Assay—Ames Test (OECD 471); Fish Acute Toxicity (OECD TG 203); Activated Sludge Test (OECD TG 209); Acute Oral Toxicity (OECD TG 401); Acute Eye Irritation (OECD TG 405); Acute Dermal Toxicity (OECD TG 402). Note: There are no additional processing and use requests beyond the original PMN, except for allowing our site limited use as a monomer in polymer production.	(S) Dodecanoic acid, ethenyl ester.
P-11-0483 ....	12/7/2018	Added commentary on EPA Risk Assessment .....	
		Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Alkyl thiol.
P-11-0484 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Alkyl sulfate salt.
P-11-0487 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Alkyl polyamide.
P-11-0527 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Substituted fluoroalkane.
P-11-0528 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Fluorinated thiol.
P-11-0529 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Fluorinated monomer.
P-11-0530 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Fluoropolyacrylamide.
P-11-0532 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Polyfluoroalkyl amine.
P-11-0533 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Non-ionic fluorosurfactant.
P-11-0534 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Anionic fluorosurfactant.
P-11-0543 ....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis.	(G) Polyfluorinated alkyl quaternary amine chloride.
P-18-0382 ....	12/10/2018	Consumer Exposure Data .....	(G) Xanthylum, bis[dicarboxycyclic] sulfonylamino-alkylcyclicamino- disulfo-sulfocyclic-, inner salt, monocationic salt.
P-17-0115 ....	12/11/2018	Skin Sensitization: Local Lymph Node Assay (OECD Test Guideline 429).	(G) Aminoalkyl alkoxysilane.
P-17-0337 ....	12/12/2018	Industrial Hygiene Monitoring Report .....	(S) Aluminum cobalt lithium nickel oxide.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: March 19, 2019.

**Pamela Myrick,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 2019-07082 Filed 4-9-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2018-0411; FRL-9990-59]

### Certain New Chemicals; Receipt and Status Information for December 2018

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 12/01/2018 to 12/31/2018.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before May 10, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0411, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. Executive Summary

#### A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 12/01/2018 to 12/31/2018. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

#### B. What is the Agency's authority for taking this action?

Under the TSCA, 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchems>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

#### C. Does this action apply to me?

This action provides information that is directed to the public in general.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

*E. What should I consider as I prepare my comments for EPA?*

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received,

pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

## III. Receipt Reports

For the PMN/SNUN/MCANs received by EPA during this period, Table I provides the following information (to

the extent that such information is not subject to a CBI claim) on the notices received by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.*, P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier versions were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs RECEIVED FROM 12/01/2018 TO 12/31/2018

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-19-0011 .....	1	12/23/2018	Danisco US, Inc .....	(G) Production of a chemical substance.	(G) Genetically modified microorganism for the production of a chemical substance.
P-19-0011 .....	4	12/20/2018	Shin etsu Silicones of America.	(G) Additive to the EPDM rubber compounds.	(G) Polysulfides, bis[3-(trialkoxysilyl)propyl].
P-19-0030 .....	2	12/18/2018	CBI .....	(G) Water Systems .....	(G) Triethanolamine modified Phosphinocarboxylates, sodium salts.
P-19-0031 .....	2	12/28/2018	CBI .....	(S) Curing agent for epoxy coating systems.	(G) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with formaldehyde, 2-(chloromethyl)oxirane, alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), and polyamines.
P-19-0034 .....	1	12/6/2018	CBI .....	(G) Contained use as a component of tires.	(G) Metal, bis(2,4-pentanedionato-kO2,kO4)-, (T-4)-.
P-19-0035 .....	3	12/10/2018	Firmenich, Inc .....	(G) Fragrance .....	(S) Acetamide, 2-(4-methylphenoxy)-N-1H-pyrazol-3-yl-N-(2-thienylmethyl)-.
P-19-0036 .....	1	12/10/2018	Ethox Chemicals, LLC	(S) As an additive to polymers for improvement in gas barrier performance.	(S) 1,4-Benzenedicarboxylic acid, 1,4-bis(2-phenoxyethyl) ester.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 12/01/2018 TO 12/31/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-19-0037 .....	1	12/11/2018	CBI .....	(G) Chemical intermediate ....	(G) D-Glucaric acid, mixed alkali metal salt.
P-19-0038 .....	2	12/14/2018	Allan Chemical Corporation.	(S) Ink carrier for the ceramic industries.	(S) Fatty acids, coco, iso-Bu esters.
P-19-0040 .....	1	12/20/2018	CBI .....	(G) Intermediate .....	(G) Alkyl bis(dialkylamino alkyl) amide.
P-19-0041 .....	1	12/20/2018	CBI .....	(G) Oil water separation .....	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P-19-0042 .....	1	12/20/2018	CBI .....	(G) Oil water separation .....	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P-19-0043 .....	1	12/20/2018	CBI .....	(G) Oil water separation .....	(G) Alkyl dicarboxylic acid, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether.
P-19-0044 .....	1	12/20/2018	CBI .....	(G) Oil water separation .....	(G) Alkyl bis(dialkylamino alkyl) amide polymer with bis(halogenated alkyl) ether.
P-19-0045 .....	1	12/21/2018	CBI .....	(G) Component of textile coating.	(G) Non-metal tetrakis (hydroxyalkyl)-, halide, polymer with amide oxidized.
SN-19-0002 .....	2	12/20/2018	Otsuka Chemical America, Inc.	(G) Friction and wear stabilizer in certain solid composite articles.	(G) Potassium Titanate.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case

number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the

submitter in the NOC, a notation of the type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs RECEIVED FROM 12/01/2018 TO 12/31/2018

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J-16-0021 .....	12/04/2018	12/04/2018	.....	(G) Modified trichoderma reesei.
J-18-0026 .....	12/21/2018	11/30/2018	.....	(G) Biopolymer producing modified microorganism(s), with chromosomally-borne modifications.
J-18-0027 .....	12/21/2018	12/07/2018	.....	(G) Biopolymer producing modified microorganism(s), with chromosomally-borne modifications.
J-18-0044 .....	12/21/2018	11/26/2018	.....	(S) Saccharomyces cerevisiae NE095.
P-12-0168 .....	12/13/2018	12/07/2018	.....	(S) 1,3,5-Triazine-2,4,6-triamine, N-(4,6-diamino-1,3,5-triazin-2-yl)-.
P-16-0150 .....	12/20/2018	11/29/2018	.....	(G) Chlorofluorocarbon.
P-16-0173A .....	12/20/2018	06/06/2016	Updated CBI substantiation for importing site and update to generic chemical name.	(G) Aminoalkyl alaninate sodium salt (1:1), polymer with alkylidol, dialkyl-alkanediol, alkylidic acid, alkylidol, polyol, cycloaliphatic diisocyanate, polyalkylene glycol mono-alkyl ether-blocked.
P-16-0221 .....	12/14/2018	12/13/2018	.....	(G) Fluorinated organopolysilazane.
P-17-0330 .....	12/11/2018	12/03/2018	.....	(G) Hexanedioic acid, polymer with trifunctional polyol, 1,1'-methylenebis [isocyanatobenzene], and 2,2'-oxybis [ethanol].
P-17-0332 .....	12/14/2018	11/20/2018	.....	(G) Benzenesulfonic acid, (alkenediyl)bis[[(hydroxyalkyl)amino]- (phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts.
P-18-0002 .....	12/05/2018	12/05/2018	.....	(S) Phosphinic acid, P,P-diethyl-, sodium salt (1:1).
P-18-0147 .....	12/13/2018	11/29/2018	.....	(G) Phenol, 4-ethenyl-, 1-substituted, polymer with 1-(1,1-substituted)-4-ethenylbenzene and ethenylbenzene, 2, 2'-(1,2-diazenediyl)bis[2-substituted]-initiated, hydrolyzed.

TABLE II—NOCs RECEIVED FROM 12/01/2018 TO 12/31/2018—Continued

Case No.	Received date	Commence- ment date	If amendment, type of amendment	Chemical substance
P-18-0212 .....	12/11/2018	12/07/2018	.....	(G) Substituted carbomonocycle, polymer with alkyl alkenoate, alkenyl substituted carbomonocycle, substituted alkanediol, heteropolycycle, alkylene glycol and alkenoic acid, compd. with alkylamino alkanol.
P-18-0261 .....	12/06/2018	12/05/2018	.....	(G) Metal, alkylcarboxylate oxo complexes.
P-18-0279 .....	12/17/2018	12/14/2018	.....	(G) Substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocycle, alkylene glycol acrylate-blocked.

In Table III. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information received

by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 12/01/2018 TO 12/31/2018

Case No.	Received date	Type of test information	Chemical substance
P-00-0281 .....	12/4/2018	Fish Acute Toxicity (OECD 203) Invertebrate Acute Toxicity (Fathead minnows), Algae Toxicity (Raphidocelis subcapitata).	(G) Alkarylsulfonic acid, sodium salts.
SN-17-0011 .....	12/4/2018	Whole Body (Inhalation) 2 Generation Reproductive Toxicity Study and Work Place Air Monitoring and Exposure Modeling Study.	(G) Polyfluorohydrocarbon.
P-87-1436 .....	12/6/2018	QSAR Assessment Report on Vinyl Laurate; Skin Sensitization: Local Lymph Node Assay (OECD TG 429); Repeated Dose 90-Day Oral Toxicity in Rodents (OECD TG 408); Repeated Dose Toxicity and Repro/Devel Toxicity Screening (OECD TG 422); Chromosome Aberration Test (OECD TG 473); Gene Mutation Assay (OECD TG 476); Micronucleus Test (OECD TG 474); Prenatal Developmental Toxicity Study (OECD TG 414); Aquatic Toxicity—Daphnia (OECD TG 202); Aquatic Toxicity—Daphnia Reproductive (OECD TG 211); Aquatic Toxicity—Algal Growth (OECD TG 201); Ready Biodegradability (OECD TG 301); Dermal Irritation/Corrosion (OECD TG 404); Bacterial Reverse Mutation Assay—Ames Test (OECD 471); Fish Acute Toxicity (OECD TG 203); Activated Sludge Test (OECD TG 209); Acute Oral Toxicity (OECD TG 401); Acute Eye Irritation (OECD TG 405); Acute Dermal Toxicity (OECD TG 402). Note: There are no additional processing and use requests beyond the original PMN, except for allowing our site limited use as a monomer in polymer production. Added commentary on EPA Risk Assessment.	(S) Dodecanoic acid, ethenyl ester.
P-11-0483 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Alkyl thiol.
P-11-0484 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Alkyl sulfate salt.
P-11-0487 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Alkyl polyamide.
P-11-0527 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Substituted fluoroalkane.
P-11-0528 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Fluorinated thiol.
P-11-0529 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Fluorinated monomer.
P-11-0530 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Fluoropolyacrylamide.
P-11-0532 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Polyfluoroalkyl amine.
P-11-0533 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Non-ionic fluorosurfactant.
P-11-0534 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Anionic fluorosurfactant.
P-11-0543 .....	12/7/2018	Routine/Annual Testing and Reporting: Certifications of Analysis	(G) Polyfluorinated alkyl quaternary amine chloride.
P-17-0115 .....	12/11/2018	Skin Sensitization: Local Lymph Node Assay (OECD Test Guideline 429).	(G) Aminoalkyl alkoxysilane.
P-17-0337 .....	12/12/2018	Industrial Hygiene Monitoring Report .....	(S) Aluminum cobalt lithium nickel oxide.
P-18-0382 .....	12/10/2018	Consumer Exposure Data .....	(G) Xanthylum, bis[dicarboxycyclic] sulfonylamino-alkylcyclicamino-disulfosulfocyclic-, inner salt, monocationic salt.



If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: March 7, 2019.

**Pamela Myrick,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 2019-07094 Filed 4-9-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9991-78-OLEM]

### Access to Confidential Business Information by Eastern Research Group (ERG)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of access to data and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) will authorize its contractor, Eastern Research Group (ERG) to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions.

**DATES:** Access to confidential data submitted to EPA will occur no sooner than April 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, 703-605-0516.

#### SUPPLEMENTARY INFORMATION:

### Access to Confidential Business Information

Under EPA Contract EP-W-10-055, entitled "Advancing Sustainable Materials Management (SMM): Waste Facts and Figures and Related Tasks," the Eastern Research Group (ERG) will assist the Office of Resource Conservation and Recovery, Resource Conservation and Sustainability

Division in collecting and analyzing municipal solid waste (MSW) information. The contract addresses MSW and other waste such as construction and demolition debris, however, the confidential business information (CBI) only relates to the MSW information collected and analyzed in the contract. The contract period is from March 2019 through September 30, 2020. Some of the data collected from industry are claimed by industry to contain trade secrets or CBI. In accordance with the provisions of 40 CFR part 2, subpart B, ORCR has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals.

Eastern Research Group (ERG), shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual.

The U.S. Environmental Protection Agency has issued regulations (40 CFR part 2, subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. ERG will be authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual."

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that EPA will provide Eastern Research Group access to the CBI records located in the RCRA Confidential Business Information Center. Access to RCRA CBI under this contract will take place at Eastern Research Group and EPA Headquarters only. Contractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to confidential information.

Dated: March 22, 2019.

**Barnes Johnson,**

*Director, Office of Resource Conservation & Recovery.*

[FR Doc. 2019-07113 Filed 4-9-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2003-0033; FRL-9992-02-OAR]

### Proposed Information Collection Request; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR® Product Labeling (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "EPA's ENERGY STAR Product Labeling" (EPA ICR No. 2078.07, OMB Control No. 2060-0528), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before June 10, 2019.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2003-0033, online using [www.regulation.gov](http://www.regulation.gov) (our preferred method), by email to [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** James Kwon, Climate Protection Partnerships Division, Office of Air and Radiation, Mailcode 6202A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-8538; fax number: 202-343-2200 email address: [kwon.james@epa.gov](mailto:kwon.james@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will

be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** ENERGY STAR is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements.

Program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and program requirements. Retail partners commit to selling, marketing and promoting ENERGY STAR certified products. Product brand owner partners, who are usually the manufacturer of the products, commit to having participating products certified to meet specified energy performance criteria

based on a standard test method and EPA's third party certification requirements. These requirements for ENERGY STAR product certification also include provisions for verifying the performance of certified products through verification testing. The program's emphasis on testing and third-party product review ensures that consumers can trust ENERGY STAR certified products to deliver the energy savings promised by the label. In rare circumstances where product brand licensee's wish to partner with EPA, the Agency establishes the appropriate contacts and relationships for the brand owner and licensee through a joint brand owner and licensee template that both parties are required to sign.

As part of the Agency's contribution to the overall success of the program, EPA facilitates the sale of certified products by providing consumers with easy-to-use information about the products. To perform this function, EPA must obtain data on certified products. Prior to EPA adopting a third-party certification process, product brand owners were required to submit individual product information directly to the Agency. Since 2011, product information has been recorded by Certification Bodies and shared with EPA using XML-based web services that validate and save the information in EPA's database. EPA believes the improved process of submission has reduced the burden time for Partners and the Agency by taking advantage of the infrastructure in place for certifying products. With the automated process of obtaining certified product data, certified model data is automatically updated daily on the ENERGY STAR website. To ensure that products are certified properly, the certification process also includes requirements for Certification Bodies to report to EPA products that were reviewed, but not eligible for certification. To ensure continued product performance after initial certification, EPA requires Certification Bodies to conduct post-market verification testing of a sampling of ENERGY STAR certified products. Certification Bodies are required to share information with EPA on products subjected to this post-market testing twice a year and to immediately report any certified products that no longer meet the program requirements. This process allows EPA to monitor the ongoing performance of products and take necessary steps to maintain consumer confidence in the ENERGY STAR label and protect the investment of partners.

In order to monitor progress and support the best allocation of resources,

EPA also asks manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, many manufacturers are given the option of arranging for shipment data to be sent to EPA via this third party to ensure confidentiality. In using any shipment data received directly from a partner, EPA only shares aggregate information from multiple partners so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

**Form Numbers:** 5900-252, 5900-251, 5900-33, 5900-253, 5900-168, 5900-206, 5900-207, 5900-28, 5900-208, 5900-210, 5900-228, 5900-234, 5900-229, 5900-235, 5900-47, 5900-349, 5900-350, 5900-351, 5900-348, 5900-35, 5900-36, 5900-37, 5900-38, 5900-39, 5900-41, 5900-42, 5900-43, 5900-44, 5900-48, 5900-49, 5900-50, 5900-51, 5900-53, 5900-54, 5900-55, 5900-56, 5900-57, 5900-58, 5900-230, 5900-224, 5900-227, 5900-166, 5900-165, 5900-164, 5900-226, 5900-163, 5900-34, 5900-216, 5900-217, 5900-218, 5900-388.

**Respondents/affected entities:** Respondents for this information collection request include Partners in ENERGY STAR.

**Respondent's obligation to respond:** Voluntary.

**Estimated number of respondents:** 2,080.

**Frequency of response:** Initially/one-time and annually.

**Estimated total annual hour burden:** 41,209 hours (per year). Burden is defined at 5 CFR 1320.03(b).

**Estimated total annual cost:** \$3,118,166 (per year), includes \$17,285 annualized capital or operation & maintenance costs.

**Changes in the estimates:** The burden estimates presented in this notice are from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval, in the next **Federal Register** notice to be issued for this renewal.

Dated: April 1, 2019.

**Carolyn Snyder,**  
Director, Climate Protection Partnerships Division.

[FR Doc. 2019-07109 Filed 4-9-19; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a new system of records.

**SUMMARY:** The Federal Communications Commission (FCC or Commission or Agency) proposes to add a new system of records, FCC/OWD–2, Alternative Dispute Resolution (ADR) Program, to its inventory of records systems subject to the *Privacy Act of 1974*, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The FCC's Office of Workplace Diversity (OWD) will use this new ADR Program system to cover the personally identifiable information (PII) that is collected, used, stored, and maintained in an OWD database that is used for the FCC's ADR services.

**DATES:** This system of records will become effective on April 10, 2019. Written comments on the system's routine uses are due by May 10, 2019. The routine uses will become effective on May 10, 2019, unless written comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Leslie F. Smith, (202) 418–0217, or [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov) (and to obtain a copy of the Narrative Statement that includes details of this proposed new system of records).

**SUPPLEMENTARY INFORMATION:** On March 1, 2017, the FCC's Chairman launched a “Don't Escalate, Choose to Mediate” campaign to promote the voluntary use of Alternative Dispute Resolution (ADR) to resolve workplace disputes. As part of the implementation of this initiative, this notice provides details about the proposed new system of records, FCC/OWD–2, Alternative Dispute Resolution (ADR) Program, which OWD will use to cover the PII that is stored in the ADR Program database that OWD will use in ADR Program services for FCC employees and other individuals at the FCC.

#### SYSTEM NAME AND NUMBER:

FCC/OWD–2, Alternative Dispute Resolution (ADR) Program.

#### SECURITY CLASSIFICATION:

Unclassified.

#### SYSTEM LOCATION:

Office of Workplace Diversity (OWD), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554.

#### SYSTEM MANAGER(S) AND ADDRESS:

Director of Office of Workplace Diversity (OWD), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

*Administrative Dispute Resolution Act*, 5 U.S.C. 571; *Civil Justice Reform*, Executive Order 12988; 29 CFR 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603.

#### PURPOSE(S) OF THE SYSTEM:

This system will cover the PII that is collected, used, stored, and maintained in the database of the OWD Alternative Dispute Resolution (ADR) Program database, which will provide a forum for the informal resolution of a variety of workplace disputes as an alternative to the formal procedures that employees traditionally use to resolve disputes. OWD will use the information to provide the ADR Program's processes, proceedings, and services to FCC employees and related individuals. Information on the disposition of each of the proceedings will also be maintained in this system's database.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals include, but are not limited to current and former FCC employees and other individuals who may be associated with the ADR Program's processes and proceedings related to disputes occurring in connection with their FCC employment.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include, but are not limited to information that is required/requested on OWD's ADR Intake Form and all related documents, records, and files associated with the ADR process, including: The employee's name, home, work, and mobile telephone numbers, primary and secondary email addresses, home contact information, current position address, representative's name, address, and telephone number, Federal employee status (Y/N), current Federal employee position title and grade,

individuals involved in the dispute, other formal/informal filings, the dispute description, each individual's involvement in the dispute, employee signature and request date.

#### RECORD SOURCE CATEGORIES:

The sources for the information in the ADR Program database include, but are not limited to the FCC employees and other individuals who are associated with the ADR Program's process and the records, files, and material(s) that are part of these ADR Program activities.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Congressional Inquiries—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
2. Government-wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

3. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or other administrative or adjudicative bodies before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where DOJ or the FCC has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by DOJ or the

FCC is deemed by the FCC to be relevant and necessary to the litigation.

4. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, and/or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

5. Labor Relations—To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

6. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the FCC—To disclose information to a Federal, State, local, foreign, tribal, or other public agency or authority maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the classifying of jobs, the letting of a contract, or the issuance or retention of a license, grant, or other benefit by the Commission, to the extent that the information is relevant and necessary to the requesting agency's decisions on the matter.

7. FCC Functions—To disclose information to potential witnesses as appropriate and necessary to perform the FCC's functions under 29 CFR part 1614.

8. Breach Notification—To disclose information to appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Assistance to Federal Agencies and Entities—To another Federal agency or

Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. For Non-Federal Personnel—To disclose information to contractors performing or working on a contract for the Federal Government, who may require access to this system of records.

#### REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the *Debt Collection Act*, 31 U.S.C. 3711(e).

#### POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The information in this system includes:

1. Electronic records, files, and data that are maintained in a password protected database that is housed on the FCC computer network; and

2. Paper documents, records, and files that are stored in file cabinets in "non-public" rooms in the OWD office suite.

#### POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are filed alphabetically and retrieved by the last name of the FCC employee and other individuals and/or a corresponding ADR Program identity number.

#### POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records kept by the FCC are maintained and disposed of in accordance with General Records Schedule (GRS) 2.3, items 10–12, issued by the National Archives and Records Administration (NARA):

10. ADR Program Files (program management and routine activities):

- Destroy when three years old, but authorization for longer retention if required for business use.

11. ADR case files—Informal process (associated with another employee dispute, complaint or grievance process):

- Destroy three years after case is closed, but authorization for longer retention if required for business use.

12. ADR case files—Formal process (generated in response to a referral from another dispute, grievance or complaint process, *i.e.*, EEO complaints or grievances):

- Destroy seven years after case is closed, but authorization for longer retention if required for business use.

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. The electronic records, data, and files are maintained in a database housed in the FCC computer network databases. The FCC's computer network is protected by the FCC's IT privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standard and Technology (NIST) and the *Federal Information Security Modernization Act of 2014* (FISMA).

2. There are a limited number of paper documents, files, and records, which are stored in file cabinets in the OWD office suite. These cabinets are locked when not in use and/or at the end of the business day. All access points for the OWD office suite are monitored.

3. Furthermore, as part of the FCC's privacy safeguards, only authorized OWD supervisors, employees, and contractors, including IT contractors who manage the FCC's computer network may have access to the electronic data and the paper document files. Other FCC employees may be granted access on a "need-to-know" basis.

#### RECORD ACCESS PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

#### CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

#### NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology (IT), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554 or [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

Individuals must furnish reasonable identification by showing any two of the following: Social security card; driver's license; employee identification card; Medicare card; birth certificate; bank

credit card; or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 0, subpart E).

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

This is a new system of records.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison, Office of the Secretary.*

[FR Doc. 2019-07095 Filed 4-9-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act ("Act") (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 25, 2019.

*A. Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to [Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org):

1. *Rennetta Rockhold, as Successor Trustee of the Rockhold Trust, Kirksville, Missouri*; to retain voting shares of Rockhold BanCorp, and thereby retain shares of Bank of Kirksville, both of Kirksville, Missouri.

Board of Governors of the Federal Reserve System, April 5, 2019.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2019-07090 Filed 4-9-19; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 2019.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Sword Financial Corporation, Horicon, Wisconsin*; to merge with Markesan Bancshares, Inc., Markesan, Wisconsin and thereby indirectly acquire Markesan State Bank, Markesan, Wisconsin.

Board of Governors of the Federal Reserve System, April 5, 2019.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2019-07091 Filed 4-9-19; 8:45 am]

**BILLING CODE P**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0302; Docket No. 2019-0001; Sequence No. 5]

### Information Collection; General Services Administration Acquisition Regulation; Modifications 552.238-81

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding the Modifications clause.

**DATES:** Submit comments on or before: June 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Bowman, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202-357-9652 or email [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov).

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090-0302, Modifications," under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0302, Modifications." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0302, Modifications," on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090-0302, Modifications.

*Instructions:* Please submit comments only and cite Information Collection 3090-0302, Modifications, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov),

approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

The General Services Administration Acquisition Regulation (GSAR) clause 552.238–81 Modifications requires vendors to request a contract modification by submitting a request to the Contracting Officer for approval, except for electronic File updates. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

##### B. Annual Reporting Burden

*Respondents:* 14,376.

*Responses per Respondent:* 2.

*Total Responses:* 28,752.

*Hours per Response:* 3.5.

*Total Burden Hours:* 100,632.

##### C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

##### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405; telephone 202–501–4755. Please cite OMB Control No. 3090–0302, "Modifications" in all correspondence.

**Jeffrey A. Koses,**

*Director, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2019–07066 Filed 4–9–19; 8:45 am]

**BILLING CODE 6820–61–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–004, Cancer Prevention and Control Research Network Coordinating Center and SIP19–005, Cancer Prevention and Control Research Network Collaborating Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–004, Cancer Prevention and Control Research Network Coordinating Center and SIP19–005, Cancer Prevention and Control Research Network Collaborating Center; April 30, 2019 and May 1, 2019; 10:00 a.m.–6:30 p.m., EDT which was published in the **Federal Register** on Wednesday, February 13, 2019, Volume 84, Number 30, pages 3785.

The meeting is being amended to read as follows: Meeting date April 30, 2019. The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, [kva5@cdc.gov](mailto:kva5@cdc.gov).

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Sherri Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2019–07062 Filed 4–9–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–19–004, Commercial Fishing Occupational Safety Research Cooperative Agreement; RFA–OH–19–005, Commercial Fishing Occupational Training Project Grants.

*Date:* June 24–26, 2019.

*Time:* 8:00 a.m.–5:00 p.m. EDT.

*Place:* Virtual Meeting.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Nina Turner, Ph.D., Scientific Review Officer, Office of Extramural Programs, 1095 Willowdale Road, Morgantown, West Virginia 26506, (304) 285–5976, [nxt2@cdc.gov](mailto:nxt2@cdc.gov).

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Sherri Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2019–07063 Filed 4–9–19; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket No. CDC–2019–0028]

#### Advisory Committee on Immunization Practices (ACIP); Notice of Meeting and Request for Comment

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public, limited only by room seating. The meeting room accommodates 216 for public seating. Room 245, adjacent to the meeting

room, will be available once the meeting room reaches capacity, providing up to 18 additional seats. Time will be available for public comment. The meeting will be webcast live via the World Wide Web; for meeting registration and more information on ACIP please visit the ACIP website: <http://www.cdc.gov/vaccines/acip/index.html>.

**DATES:** The meeting will be held on June 26, 2019 8:00 a.m. to 5:30 p.m. and June 27, 2019 8:00 a.m. to 4:00 p.m. EDT. *Written comments must be received on or before June 29, 2019.*

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2019–0028 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Mailstop A–27, Atlanta, GA 30329–4027

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received in conformance with the <https://www.regulations.gov> suitability policy will be posted without change to <http://regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Written public comments submitted by 72 hours prior to the ACIP meeting will be provided to the ACIP members before the meeting.

*Meeting location:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, Tom Harkin Global Communications Center, Building 19, Kent ‘Oz’ Nelson Auditorium, Atlanta, Georgia 30329–4027.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Thomas, ACIP Committee Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, Atlanta, GA 30329–4027, telephone 404–639–8367, email [ACIP@cdc.gov](mailto:ACIP@cdc.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health

Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

**Public Participation**

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully review and consider all comments submitted to the docket.

*Oral Public Comment:* This meeting will include time for members of the public to make an in-person oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP’s Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below. On-site, in-person registration for oral public comment at the meeting will only be available if there is time remaining in the oral public comment session after all individuals who submitted a request to make an oral comment before the meeting have had an opportunity to speak. There is no guarantee there will be an opportunity for on-site, in-person registration for oral public comment, and all individuals interested in requesting to make an oral public comment are strongly encouraged to submit a request according to the instructions below.

*Procedure for Oral Public Comment:* All persons interested in making an oral public comment at the June ACIP meeting must submit a request at <https://www.cdc.gov/vaccines/acip/meetings/> no later than 11:59 p.m., EDT,

June 12, 2019 according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for each scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by June 14, 2019. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

*Written Public Comment:* Written comments must be received on or before June 29, 2019.

*Matters To Be Considered:* The agenda will include discussions on human papillomavirus vaccines, pneumococcal vaccines, influenza vaccines, meningococcal vaccines, hepatitis A vaccines, combination vaccines (diphtheria, tetanus, and pertussis; *Haemophilus influenzae* type b, hepatitis B, polio) dengue vaccine, pertussis vaccines, and herpes zoster vaccine. A recommendation vote is scheduled for human papillomavirus vaccines, pneumococcal vaccines, influenza vaccines, meningococcal vaccines, and hepatitis vaccines. A Vaccines for Children recommendation vote is scheduled for diphtheria, tetanus, and pertussis vaccines, *Haemophilus influenzae* type b vaccines, polio vaccines, hepatitis B vaccines, influenza vaccines, meningococcal vaccines, and hepatitis A vaccines. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit <https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html>.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Sherri A. Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2019–07064 Filed 4–9–19; 8:45 am]

**BILLING CODE 4163–18–P**



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 84 FR 10518–10519, dated March 21, 2019) is amended to reflect the reorganization of the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention. The reorganization is needed to provide streamlined and focused research programs in Cincinnati, as well as to better deliver administrative and management functions by the Office of Administrative and Management Services within the NIOSH Office of the Director.

I. Under Part C, Section C–B, Organization and Functions, the following organizational units are deleted in their entirety:

- Office of Administrative and Management Services (CCA1)
- Administrative Services Branch (Pittsburgh) (CCA12)
- Administrative Services Branch (Cincinnati) (CCA13)
- Administrative Services Branch (Spokane) (CCA14)
- Management Systems Branch (CCA15)
- Administrative Services Branch (Morgantown) (CCA16)
- Health Communication Research Branch (CCCH)
- Document Development Branch (CCED)
- Division of Applied Research and Technology (CCG)

II. Under Part C, Section C–B, Organization and Functions, make the following changes:

- Create the Office of the Deputy Director for Management (CCA6)
- Create the Human Capital Management Office (CCA62)
- Create the Facilities Management Office (CCA63)
- Create the Fiscal Resources Management Office (CCA64)
- Create the Information Technology and Informatics Services Office (CCA65)
- Create the Policy, Planning, and Evaluation Office (CCA66)
- Retitle all references to the Engineering and Control Branch

(CCCE) to the Physical Effects Research Branch (CCCE)

- Retitle all references to the Biostatistics and Epidemiology Branch (CCCH) to the Bioanalytics Branch (CCCH)
- Create the Chemical and Biological Monitoring Branch (CCCK)
- Retitle all references to the Education and Information Division (CCE) to the Division of Science Integration (CCE)
- Retitle all references to the Information Resources and Dissemination Branch (CCEB) to the Science Applications Branch (CCEB)
- Retitle all references to the Training Research and Evaluation Branch (CCEC) to the Social Science and Translation Research Branch (CCEC)
- Create the Emerging Technologies Branch (CCEG)
- Retitle all references to the Division of Surveillance, Hazard, Evaluations, and Field Studies (CCK) to the Division of Field Studies and Engineering (CCK)
- Retitle all references to the Industrywide Studies Branch (CCKC) to the Field Research Branch (CCKC)
- Retitle all references to the Surveillance Branch (CCKD) to the Health Informatics Branch (CCKD)
- Create the Engineering and Physical Hazards Branch (CCKE)

III. Under Part C, Section C–B, Organization and Functions, insert the following:

- Office of the Deputy Director for Management (CCA6): Provides leadership, direction, guidance and support across the Institute in the areas of: (1) Information technology and informatics; (2) facilities management; (3) policy, planning and evaluation; (4) fiscal resources management; and (5) human capital management.
- Human Capital Management Office (CCA62): (1) Serves as the Institute's focal point for Strategic Human Capital Management activities that promote and retain a high-performing, diverse and engaged workforce; (2) coordinates and advises on human capital programs and initiatives; (3) conducts strategic human capital planning activities to ensure all human capital programs are aligned with agency missions, goals, and objectives through analysis, planning, investment, and measurement; (4) implements talent management initiatives to ensure that the Institute has the right people with the right skills in the right position at the right time to accomplish the Institute's mission; (5) creates and sustains a performance culture that engages, develops, retains and inspires a diverse, high-performing workforce by creating, implementing,

and maintaining effective performance management and incentive strategies, practices, and activities; (6) initiates labor-management activities that promote a shared vision of mission accomplishment through partnerships with labor unions; (7) provides programs and initiatives that support an engaged and healthy NIOSH workforce; and (8) performs human capital support functions to include monitoring and tracking recruitment and placement activities, maintaining position-based management systems, conducting new NIOSH employee onboarding and orientation, approving incentive and performance awards, planning and implementing awards programs, ensuring manager and supervisor compliance in areas of performance management, managing and providing NIOSH-specific training opportunities, and other human capital support advice, activities and functions.

- Facilities Management Office (CCA63): (1) Provides leadership, guidance, direction and support for all Facilities Engineering and Environmental Safety and Health functions across the Institute; (2) provides and/or oversees comprehensive facilities operations, maintenance, and support functions for the offices, laboratories, and grounds at NIOSH facilities (Cincinnati, Morgantown, Pittsburgh, and Spokane); (3) serves as the focal point on matters of internal security and safety including facilities security coordination, smart card/ID card issuance and control, access to facilities, and in/out processing; and (4) provides inventory and property management control activities at NIOSH field locations.

- Fiscal Resources Management Office (CCA64): (1) Provides fiscal expertise and oversight to the Institute, divisions and geographic locations across the Institute; (2) provides for sound fiscal stewardship, and ensures compliance with Appropriation Law and all HHS, CDC, NIOSH policies; (3) ensures the most efficient and appropriate allocation of fiscal resources to support NIOSH's research; and (4) handles budget planning and execution oversight, acquisition policy and oversight, and business services oversight for travel management, ICAP processing, P-card and travel card compliance, and timekeeping.

- Information Technology and Informatics Services Office (CCA65): (1) Provides expertise in enterprise architecture, IT policy and planning, data architecture and administration, IT lifecycle management, and subject matter expertise supporting analytical software and the NIOSH Analytical Data



Warehouse program; (2) provides information security and resources for NIOSH IT and data security needs across the Institute; (3) provides management of the NIOSH technology platforms providing data, application and analytical services to NIOSH divisions while performing administrative security and patching functions on behalf of the NIOSH user community; (4) provides specialized ready-to-use application platforms, design support and subject matter expertise to NIOSH divisions for core application platforms providing database, analytical, visualization and web services; and (5) supports NIOSH divisions with IT policy, business process development and project management services including compliance requirements for the Federal Information Technology Acquisition Reform Act, the Enterprise Performance Life Cycle, Data Governance and the National Archives and Records Administration.

- Policy, Planning, and Evaluation Office (CCA66): (1) Provides leadership and coordination of the Institute's planning, evaluation, legislative, committee management, and policy activities; (2) provides technical assistance to NIOSH scientists; (3) designs and carries out evaluation studies based on evidence-based evaluation methodologies, and advances the ways NIOSH demonstrates the relevance and impact of its work; (4) ensures budget formulation through the Congressional budget and appropriations process, and coordinates responses to requests from Congress, OMB, HHS, and others; (5) coordinates FOIA and Privacy Act responses; (6) oversees and coordinates project planning, strategic planning, research program portfolio management, and program evaluation across the Institute; and (7) provides oversight for Committee Management for NIOSH's two main Federal Advisory Committee Act responsibilities (the Board of Scientific Counselors and the Mine Safety and Health Research Advisory Committee).

- Physical Effects Research Branch (CCCE): (1) Provides research capabilities for developing and establishing engineering solutions for the control of occupational disease; (2) coordinates with the Exposure Assessment Branch to develop engineering techniques to solve problems in measuring and monitoring programs; (3) develops and utilizes techniques in computerized workplace simulations and mathematical models; (4) develops passive protective devices and systems for preventing or

minimizing worker exposure to hazardous chemical, biological, and physical substances; and (5) develops sophisticated personal protective equipment to provide workers with information about their working environment.

- Bioanalytics Branch (CCCH): (1) Provides experimental design and support of laboratory-based research to address the statistical aspects of projects in the Division and throughout the Institute; (2) verifies the statistical quality, both in the design and analysis phases, of all experimental research in the Institute; (3) develops and directs the application of new statistical methods as well as the design and analysis of field research projects for the Institute; (4) develops computerized methods for independent research initiatives in statistical methods to advance basic research in experimental and observational studies; and (5) collaborates in the design of laboratory and field research studies, providing consultation through the course of research on computerized methods of data collection and interpretation of results.

- Chemical and Biological Monitoring Branch (CCCK): (1) Conducts applied research and establishes the methods for the identification and assessment of occupational exposures using biomonitoring, industrial hygiene field- and laboratory-based analytical methods, direct reading instruments and sensors, advanced microscopy techniques, and aerosol science; and (2) serves as an Institutional resource and collaborates with internal and external partners as related to application of these areas for occupational exposure assessment research focusing on novel and emerging issues.

- Division of Science Integration (CCE): (1) Conducts research that will lead to the prevention of occupational disease, deaths, and injuries through the evaluation and synthesis of scientific information, and forecasting the emergence of technologies that impact work, how work is organized, and how to stimulate change in the work environment; (2) researches and develops preventive outcomes so that workers are protected from workplace hazards; (3) identifies factors that impact the conduct of work and that are potentially harmful to workers and the workforce; (4) develops recommendations and guidance for safe and best practices by building on research, evaluation, synthesis of information, and collaboration across branches and programs; and (5) conducts studies of the most effective ways to translate research and guidance

to practice through utilization of hazard and risk information to apprise employers, workers, and decision makers of the extent and severity of workplace risks to be prevented and the means to do so.

- Science Applications Branch (CCEB): (1) Develops interventions and preventive guidance to protect the workforce from adverse effects of work and workplace hazards through the evaluation and synthesis of scientific research; (2) conducts research to address the range of workplace hazards in their chemical, physical, and biological forms and conducts research on the organization of work, which will lead to the development of guidance on various hazards and analytical methods; and (3) prioritizes and informs guidance development through the use of risk assessments and exposure science.

- Social Science and Translation Research Branch (CCEC): (1) Conducts research on work and non-work factors that lead to adverse effects in workers and develops guidance to ameliorate those factors through focusing on understanding and investigating the environment of work; (2) conducts research on how work is organized and the implications for health, productivity, and prevention; (3) provides leadership via a virtual cross-Institute effort in translation research which is the application of scientific investigative approaches to study how the outputs of basic and applied research can be effectively translated into practice and have an impact, including the study of how useful knowledge and interventions are disseminated, adopted, implemented and institutionalized; and (4) conducts research and develops guidance on vulnerable populations including young, aging, contingent, and immigrant workers, and small businesses.

- Emerging Technologies Branch (CCEG): (1) Conducts research and gathers information that facilitates forecasting, identifying, evaluating, and developing guidance on potential hazards in new or emergent technologies; (2) collaborates with other branches, divisions, programs, and agencies that research and investigate new technologies to identify and increase understanding of hazards as a technology emerges and information on it as it is deployed; (3) conducts research addressing nanotechnology, advanced manufacturing and materials, synthetic and engineered biology, and other technologies as they emerge; (4) manages and coordinates the Nanotechnology Research Center; and (5) develops recommendations and guidance, utilizing Prevention through

Design (PtD) concepts, and leads the PtD program.

- Division of Field Studies and Engineering (CCK): (1) Conducts the legislatively mandated health hazard evaluation and industry-wide research programs through longitudinal record-based studies and field studies to identify the occupational causes of disease in working populations and their offspring, and determines the incidence and prevalence of acute and chronic effects from work-related exposures to hazardous substances; (2) conducts exposure, epidemiologic, and engineering research for input to standards to control occupational health hazards; (3) plans and conducts worksite and laboratory engineering research to identify, evaluate, develop and implement technology to prevent workers' exposures to chemical, biological, and physical agents; (4) plans and conducts laboratory and worksite research to develop strategies to prevent occupational hearing loss and musculoskeletal disorders; (5) develops and maintains data systems, using national and state data, that track the magnitude and extent of job-related illnesses, exposures, and hazardous agents among the nation's workers; (6) provides support for first responders during national emergency response activities; and (7) provides technical assistance and consultation on matters pertaining to occupational safety and health to other Federal, state, and local agencies, and other groups or individuals.

- Field Research Branch (CCKC): (1) Conducts and supports etiologic and exposure assessment research studies in working populations; (2) communicates research results to workers, scientists, industry, and the public; (3) provides research data for the development of health hazard controls and protective standards; and (4) conducts research using workers' compensation data and systems to identify hazards and improve workplace safety and health.

- Health Informatics Branch (CCKD): (1) Develops, maintains, and uses data and record systems to track the magnitude and extent of job-related illnesses and exposures among the nation's workers using new and existing data from sources such as Federal, State, and local agencies, labor, industry, tumor registries, medical, laboratory, and other records; (2) uses novel research methods to identify and develop, or in certain instances, support the development of new sources of data for surveillance and research purposes; (3) develops new surveillance research methods; and (4) uses new technologies to communicate health and exposure

information to stakeholders and the public.

- Engineering and Physical Hazards Branch (CCKE): (1) Plans and conducts research on engineering control technology to prevent worker exposures to hazards and promotes the application of effective engineering control technologies for safeguarding worker health and safety; (2) provides consultation in the application of effective control solutions and techniques for hazard prevention; (3) conducts research related to occupational hearing loss, including causative factors, noise control, hearing protection devices, and impulse noise to prevent occupational hearing loss for workers at risk in non-mining sectors; (4) conducts research related to ergonomic hazards including developing engineering controls in the laboratory and evaluating their effectiveness in the workplace to prevent workplace musculoskeletal disorders; and (5) conducts rapid prototype research to design and develop control solutions to workplace exposure problems.

*IV. Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue with them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

**Alex M. Azar II,**

*Secretary.*

[FR Doc. 2019-07035 Filed 4-9-19; 8:45 am]

**BILLING CODE 4160-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3371-FN]

#### Medicare and Medicaid Programs: Approval of an Application From Accreditation Commission for Health Care, Inc. for CMS Approval of Its End Stage Renal Disease (ESRD) Facility Accreditation Program

**AGENCY:** Centers for Medicare and Medicaid Services (CMS), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces our approval of the Accreditation Commission for Health Care, Inc. (ACHC) for recognition as a national accrediting organization (AO) for End Stage Renal Disease (ESRD) Facilities

that wish to participate in the Medicare or Medicaid programs.

**DATES:** The approval announced in this final notice is effective April 11, 2019 through April 11, 2023.

**FOR FURTHER INFORMATION CONTACT:** Tara Lemons, (410) 786-3030, Monda Shaver, (410) 786-3410 or Joann Fitzell (410) 786-4280.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an end stage renal disease (ESRD) facility, provided the facility meets the requirements established by the Secretary of the Department of Health and Human Services (the Secretary). Section 1881(b) of the Social Security Act (the Act) establishes distinct requirements for facilities seeking designation as an ESRD facility under Medicare. Regulations concerning provider agreements and supplier approval are at 42 CFR part 489 and those pertaining to activities relating to the survey, certification, and enforcement procedures of suppliers, which include ESRD facilities are at 42 CFR part 488. The regulations at part 494 subparts A through D implement section 1881(b) of the Act, which specify the conditions that an ESRD facility must meet in order to participate in the Medicare program and the conditions for Medicare payment for ESRD facilities.

For an ESRD facility to enter into a provider agreement with the Medicare program, an ESRD facility must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1881(b) of the Act and our regulations at part 494 subparts A through D. Subsequently, the ESRD facility is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act provides that, if the Secretary finds that accreditation of a provider entity by an approved national accrediting organization (AO) meets or exceeds all applicable Medicare conditions, we may treat the provider entity as having met those conditions, that is, we may "deem" the provider entity to be in compliance. Accreditation by an AO is voluntary and is not required for Medicare participation.

Section 1865(a)(1) of the Act had historically excluded dialysis facilities from participating in Medicare via a Centers for Medicare & Medicaid Services (CMS)-approved accreditation program; however, section 50404 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 1865(a) of the Act to include renal dialysis facilities as provider entities allowed to participate in Medicare through a CMS-approved accreditation program.

If an AO is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. An AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

## II. Application Approval Process

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of an AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities that were not in compliance with the conditions or requirements; and their ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

## III. Provisions of the Proposed Notice

On November 2, 2018, we published a proposed notice in the **Federal Register** announcing Accreditation Commission for Health Care, Inc.'s (ACHC's) request for approval of its Medicare ESRD facility accreditation program (83 FR 55172). In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we

conducted a review of ACHC's Medicare ESRD Facility accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An onsite administrative review of ACHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ESRD facilities; and, (5) survey review and decision-making process for accreditation.

- A comparison of ACHC's Medicare accreditation program standards to our current Medicare ESRD facility Conditions for Coverage (CfCs).

- A documentation review of ACHC's survey process to do the following:

- ++ Determine the composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing surveyor training.

- ++ Compare ACHC's processes to those we require of State survey agencies, including periodic re-survey and the ability to investigate and respond appropriately to complaints against accredited ESRD facilities.

- ++ Evaluate ACHC's procedures for monitoring ESRD Facilities it has found to be out of compliance with ACHC's program requirements. This pertains only to monitoring procedures when ACHC identifies non-compliance. If non-compliance is identified by a State survey agency through a validation survey, the State survey agency monitors corrections as specified at § 488.9(c)(1).

- ++ Assess ACHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- ++ Establish ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ Determine the adequacy of ACHC's staff and other resources.

- ++ Confirm ACHC's ability to provide adequate funding for performing required surveys.

- ++ Confirm ACHC's policies with respect to surveys being unannounced.

- ++ Obtain ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the November 2, 2018, proposed notice also solicited public comments regarding whether

ACHC's requirements met or exceeded the Medicare CfCs for ESRD facilities. No comments were received.

## IV. Provisions of the Final Notice

### A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared ACHC's ESRD facility accreditation requirements and survey process with the Medicare CfCs at part 494, and the survey and certification process requirements of parts 488 and 489. ACHC's standards and standards crosswalk were also examined to ensure that the appropriate CMS regulations would be included in citations as appropriate. Our review and evaluation of ACHC's ESRD facility application, which was conducted as described in section III of this final notice, yielded the following areas where, as of the date of this notice, ACHC has revised the following standards and certification processes:

- Section 494.30(a)(3)–(4), to ensure that its interpretive guidance includes HBV-specific procedures.

- Section 494.90(a)(7)(ii)(C), to ensure that its standard includes the full CMS regulatory reference.

- Section 494.100(c)(1)(iii), to ensure that its standard includes the full CMS regulatory reference.

- Section 494.100(c)(2), to ensure that its standards address requirements to ensure patient privacy.

- Section 494.110, to ensure that its standards address the complexity of the facility's organization.

- Section 494.120(c)(1)(iii), to correct the CMS reference noted in its standard.

- Section 494.170(c), to accurately reflect the federal requirements for retaining records when state statutes are less restrictive, and to ensure that its standard includes the full CMS regulatory reference.

- ACHC revised its policies, procedures and surveyor worksheets to ensure that survey documentation is consistently and accurately completed; contains sufficient detail; and provides quantifiable information when appropriate.

- ACHC revised its policies and procedures to clearly delineate the criteria for determining the size and composition of its survey teams.

- ACHC revised its policies and procedures to ensure all deemed surveys remain unannounced.

### B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that ACHC's

ESRD facility accreditation program requirements meet or exceed our requirements, and its survey processes are also comparable. Therefore, we approve ACHC as a national accreditation organization for ESRD facilities that request participation in the Medicare program, effective April 11, 2019 through April 11, 2023.

#### V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 5, 2019.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2019-07135 Filed 4-9-19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10003]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of

information technology to minimize the information collection burden.

**DATES:** Comments must be received by June 10, 2019.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).

3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786-4669.

#### SUPPLEMENTARY INFORMATION:

##### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10003 Notice of Denial of Medical Coverage (or Payment) (NDMCP)

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collection

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment) (NDMCP); *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes. Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the Notice of Denial of Medical Coverage (or Payment) (NDMCP) when a request for either a medical service or payment is denied, in whole or in part. Additionally, the notices inform Medicare enrollees of their right to file an appeal, outlining the steps and timeframes for filing. All Medicare health plans are required to use these standardized notices. *Form Number:* CMS-10003 (OMB control number: 0938-0829); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 694; *Total Annual Responses:* 9,373,200; *Total Annual Hours:* 1,561,575. (For policy questions regarding this collection contact Staci Paige at 410-786-1943.)

Dated: April 4, 2019.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2019-07022 Filed 4-9-19; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Network Clinical Trials.

*Date:* April 18, 2019.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892-9529, (301) 435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

*Dated:* April 4, 2019.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019-07085 Filed 4-9-19; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP-3: NCI Clinical and Translational R21 and Omnibus R03.

*Date:* June 6-7, 2019.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892-9750, 240-276-7286, [salvucco@mail.nih.gov](mailto:salvucco@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches into Clinical Assay Development.

*Date:* June 18, 2019.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Jun Fang, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Bethesda, MD 20892-9750, 240-276-5460, [jfang@mail.nih.gov](mailto:jfang@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SEP-10: NCI Clinical and Translational R21 and Omnibus R03.

*Date:* July 9, 2019.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Jun Fang, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Bethesda, MD 20892-9750, 240-276-5460, [jfang@mail.nih.gov](mailto:jfang@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

*Dated:* April 4, 2019.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2019-07089 Filed 4-9-19; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2019-0131]

#### Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** The Coast Guard announces an additional public meeting in Montauk, NY, to receive comments on a notice of study entitled “Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island” that was published in the **Federal Register** on Tuesday, March 26, 2019, (84 FR 11314). As stated in that document the Coast Guard is conducting a Massachusetts and Rhode Island Port Access Route Study (MARIPARS) to evaluate the need for establishing vessel routing measures.

**DATES:** Three public meetings will now be held to provide an opportunity for oral comments about the MARIPARS on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m., Thursday, April 25, 2019, from 6 p.m. to 9 p.m., and on Monday, April 29, 2019, from 6 p.m. to 9 p.m. Written comments and related material may also be submitted to Coast Guard personnel specified at the meetings. The comment period for the notice of study closes on May 28, 2019. All comments and related material submitted after the meetings must be received by the Coast Guard on or before May 28, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Daylight Time on the last day of the comment period.

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0131 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

The public meeting on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m., will be held at Corless Auditorium (Watkins Laboratory Building), University of Rhode Island, Graduate School of Oceanography at 215 South Ferry Road, Narragansett, RI 02882-1197.

The public meeting on Thursday, April 25, 2019, from 6 p.m. to 9 p.m., will be held at Flanagan Hall,

Massachusetts Maritime Academy at 101 Academy Drive, Buzzards Bay, MA 02532.

The public meeting on Monday, April 29, 2019, from 6 p.m. to 9 p.m., will be held at Inlet Seafood Restaurant at 541 East Lake Drive, Montauk, NY 11954.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice or study call or email the Project Officer, Mr. Edward G. LeBlanc, Chief of Coast Guard Sector Southeastern New England Waterways Management Division, telephone (401) 435-2351; email [Edward.G.LeBlanc@uscg.mil](mailto:Edward.G.LeBlanc@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Purpose and Background

On Tuesday, March 26, 2019 we published a notice of study entitled "Port Access Route Study: The Areas Offshore of Massachusetts and Rhode Island" in the **Federal Register**, (84 FR 11314), <https://www.federalregister.gov/documents/2019/03/26/2019-05730/port-access-route-study-the-areas-offshore-of-massachusetts-and-rhode-island>. In it we stated our intention to hold two public meetings at a location in Massachusetts and Rhode Island. Since the publication of the notice in the **Federal Register** we have received a request to hold a public meeting in the Montauk, NY area. This document is the notice of that meeting.

##### II. Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials to the online public docket or orally at the public meetings. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**A. Submitting Comments:** If you submit comments to the online public docket, please include the docket number for this rulemaking (USCG-2019-0131), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. We accept anonymous comments.

To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG-2019-0131" in the "search box". Click "Search". Then click "Comment Now". We will consider all comments and material received during the comment period.

**B. Public Meetings:** We now plan to hold three public meetings to receive oral comments on this notice. If you bring written comments to the public meeting, you may submit them to Coast

Guard personnel specified at the meeting to receive written comments. These comments will be added to our online public docket. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. Attendance at the public meeting is not required. We will provide a written summary of the oral comments received and will place that summary in the docket.

The first public meeting on Tuesday, April 23, 2019, from 6 p.m. to 9 p.m., will be held at Corless Auditorium (Watkins Laboratory Building), University of Rhode Island, Graduate School of Oceanography, 215 South Ferry Road, Narragansett, RI 02882-1197.

The second public meeting on Thursday, April 25, 2019, from 6 p.m. to 9 p.m., will be held at Flanagan Hall, Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA 02532.

The third public meeting on Monday, April 29, 2019, from 6 p.m. to 9 p.m., will be held at Inlet Seafood Restaurant at 541 East Lake Drive, Montauk, NY 11954.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Mr. Edward Leblanc at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**C. Viewing the comments and documents:** You may view the notice of study, comments submitted thus far, and documents mentioned in this preamble in our online docket by going to <http://www.regulations.gov>. Once there, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2019-0131" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

**D. Privacy Act:** Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316) <https://www.federalregister.gov/documents/2008/01/17/E8-785/privacy-act-of-1974-system-of-records>.

This notice is published under the authority of 46 U.S.C. 70004 and 5 U.S.C. 552(a).

Dated: April 1, 2019.

**A.J. Tionsgon,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2019-07069 Filed 4-9-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Revision of Agency Information Collection Activity Under OMB Review: Aircraft Operator Security

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0003, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Aircraft operators must provide certain information to TSA and adopt and implement a TSA-approved security program. These programs require aircraft operators to maintain and update records to ensure compliance with security provisions set forth in regulations.

**DATES:** Send your comments by May 10, 2019. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov).

**SUPPLEMENTARY INFORMATION:** TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of

information on December 13, 2018, 83 FR 64146.

### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

### Information Collection Requirement

*Title:* Aircraft Operator Security, 49 CFR part 1544.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 1652-0003.

*Forms(s):* N/A.

*Affected Public:* Aircraft Operators.

*Abstract:* TSA's aircraft operator security standards regulations, codified at 49 CFR part 1544, require aircraft operators to adopt, maintain, update, and comply with TSA-approved comprehensive security programs to ensure the safety of persons and property traveling on their flights against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft. These programs and related records are subject to TSA inspection. TSA is revising its OMB control number 1652-0003, Aircraft Operator Security, to reflect that airlines will no longer be required to compare

passenger names to watchlists during a Secure Flight outage. Airlines will instead apply vetting results determined by TSA.

*Number of Respondents:* 673.

*Estimated Annual Burden Hours:* An estimated 569,686 hours annually.

Dated: April 3, 2019.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer,  
Information Technology.*

[FR Doc. 2019-07007 Filed 4-9-19; 8:45 am]

**BILLING CODE 9110-05-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6146-N-02]

### Privacy Act of 1974; System of Records, Validation and Disposition Services (VDS-Best Ex)

**AGENCY:** Office of Single Family Asset Management, HUD.

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Office of Single Family Asset Management, Department of Housing and Urban Development (HUD), proposes to create a new system of records (SOR) titled Validation and Disposition Services (VDS-Best Ex). The SOR VDS-Best Ex will allow HUD to mitigate financial risk to the Federal Housing Administration (FHA) Mutual Mortgage Insurance Fund (MMIF) by providing property valuation and disposition strategies for:

- FHA's Single Family Forward Mortgage Insurance portfolio of loans 90 days or more delinquent.

- FHA's Single Family Secretary-held Real Estate Owned (REO) portfolio.

The SOR VDS-Best Ex will perform statistical analysis of individual property address, square footage, age of property, location, and associated property characteristics such as number and type of living units to identify similarly situated comparable properties. This analysis will provide a valuation to compare the value of neighboring properties with similar attributes and provide a point-in-time estimation of the current value of the FHA property.

- VDS-Best Ex will use a Best Execution Calculator and use Automated Valuation Models (AVMs) to provide FHA/HUD with the best of four strategies for disposing of mortgages that are over 90 days delinquent.

- VDS-Best Ex will establish a Fair Market List Price and a bid and

counteroffer process for HUD's Single Family REO properties, to identify the ideal pricing point and discount rate percentages that FHA should consider when selling a property from its Secretary-held REO portfolio.

**DATES:** May 10, 2019.

*Comments Due Date:* May 10, 2019.

**ADDRESSES:** You may submit comments, identified by docket number HUD-2018-[XXXX] by one of the following methods:

*Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically.

*Fax:* 202-619-8365.

*Email:* [privacy@hud.gov](mailto:privacy@hud.gov).

*Mail:* Attention: Housing and Urban and Development, Privacy Office; John Bravacos, The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** John Bravacos, Senior Agency Official for Privacy; 451 Seventh Street SW, Room 10139; Washington, DC 20410; telephone number 202-708-3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department moves to provide property valuation and disposition strategies for FHA's Single Family Forward Mortgage Insurance portfolio of loans over 90 days delinquent and for FHA's Single Family Secretary-held REO portfolio managed by the Office of Single Family Asset Management. The VDS-Best Ex will support the mission of the Department by mitigating losses and financial risk to the FHA Mutual Mortgage Insurance Fund. The Department, therefore, is creating a new system of records because the VDS-Best Ex will retrieve and access information, using FHA case numbers, to identify and provide the most cost-effective disposition strategy for mortgage cases that are over 90-days delinquent or a Secretary-held REO property.

The FHA endorses mortgages made by qualified lenders to individuals



purchasing or refinancing a primary residence. The FHA's Single Family Mortgage Insurance Program provides mortgage insurance to protect lenders against the risk of default on mortgages to qualified buyers. The FHA expands homeownership opportunities for first-time homebuyers and other borrowers who would not otherwise qualify for conventional mortgages on affordable terms, as well as for those who live in underserved areas where mortgages may be harder to get. These obligations are protected by FHA's Mutual Mortgage Insurance Fund, which is sustained entirely by borrower premiums.

This program is authorized under section 203, National Housing Act (12 U.S.C. 1709(b),(i)). Program regulations are in 24 CFR part 203. If the borrower/co-borrower fails to make any payment under the insured mortgage, and such failure continues for a period of 30 days, the endorsed mortgage loan (FHA case) is considered to be in default. HUD provides training to mortgage lenders and Housing Counseling Agencies, who are then better able to aid homeowners in order to avoid foreclosure. Mortgage lenders (mortgagees) report delinquent servicing activities for all FHA cases that are 30, 60, and 90 days or more delinquent as of the last day of the month. Mortgagees must reevaluate each delinquent mortgage monthly for loss mitigation eligibility until reinstatement. If the delinquency cannot be cured, the mortgagee must take action to acquire the property. The mortgagee must acquire clear, marketable title and transfer the property to the Secretary of HUD. The property then becomes part of FHA's Single Family REO portfolio. VDS-Best Ex will analyze common characteristics of the over-90-day delinquent mortgage portfolio and provide the most cost-effective property disposition strategy. For REO properties, VDS-Best Ex will establish a Fair Market List Price, together with a bid and counteroffer process, to identify FHA's ideal pricing point and discount rate percentages. Implementation of the VDS-Best Ex strategies will allow HUD to minimize losses and to mitigate financial risk to the Mutual Mortgage Insurance Fund.

Phase I will focus on the best strategy for disposition of FHA Single Family Forward Mortgage Insurance loans over 90 days. A Best Execution Calculator will be developed to provide FHA/HUD with the best of four strategies for disposing of the delinquent mortgages. AVMs will be a key component in this solution. The solution requires data input regarding the property location and characteristics to perform a statistical analysis using similarly

situated comparable properties (aka comparables/comps) to provide a valuation. Data regarding the property address, square footage, age, etc., will be required to compare the value of neighboring properties with similar attributes and provide a point-in-time estimation of the current value of the FHA property. This estimated value will then be compared across several options used in disposing delinquent FHA properties, to provide a disposition strategy that results in the best return to HUD. The data that will support this function are the historic mortgage costs associated with the similarly situated properties that utilized the targeted disposition procedures. The output of this process will be a series of valuations that identify the current value of the property.

Phase II involves REO foreclosed properties owned by the Secretary of HUD (*i.e.*, Secretary-held). A process to establish a Fair Market List Price for REO properties will be created. The bid and counteroffer process for the REO properties will be managed as part of the VDS-Best Ex solution. The output for this service will include a value identifying what is the ideal pricing point and discount rate percentages that FHA should consider when selling an REO property. Information required to achieve this valuation will be information regarding the property address, square footage, age, etc., that will be required to compare the value of neighboring properties with similar attributes and provide a point-in-time estimation of the current value of the FHA property. The resulting valuation will then be compared against purchasing offers made for each REO property to ascertain whether to accept a bid, reject a bid, and/or counteroffer based on assessment of the proposed amount only.

VDS-Best Ex will routinely *produce property valuations* and determine *property disposition* strategies for the FHA Single Family Forward Mortgage Insurance delinquent portfolio. The property valuation part of the contract will be completed using the AVM suite. The AVM will create a point-in-time "value" for the property (either retroactive, current, or future). The AVM suite will be used to finalize and train a customized model that will generate a set of "reserve prices" for each disposition option, with the goal of minimizing the loss to HUD/FHA due to a delinquent property claim.

#### SYSTEM NAME AND NUMBER:

Valuation and Disposition Services (VDS-Best Ex).

#### SECURITY CLASSIFICATION:

Unclassified, non-sensitive, for official use only.

#### SYSTEM LOCATION:

The system is externally hosted and controlled at the contractor's primary and backup facilities. The VDS primary host server is in Plano, Texas (2300 West Plano Parkway, Plano, TX 75075); the data and statistical modeling is hosted in Roseville, California (2270 Douglas Boulevard, Suite 120, Roseville, CA 95661); Washington, DC (601 New Jersey Avenue NW, Suite 400, Washington, DC 20001); and Herndon, VA (950 Herndon Parkway, Suite 410, Herndon, VA 20170). The backup/disaster recovery facilities for the main data centers are in Quincy, Washington (525 D Street NW, Quincy, WA 98848).

The VDS-Best Ex outputs will be accessible at workstations located at the following locations: 451 Seventh Street SW, Washington, DC 20410 and at HUD National Servicing Center 301 Northwest 6th Street, Suite 200, Oklahoma City, OK 73102.

Records of system outputs will be maintained at the Department of Housing and Urban Development Headquarters, at 451 Seventh Street SW, Room 4156, Washington, DC 20410.

#### SYSTEM MANAGER:

Ivery Himes, VDS-Best Ex system owner and Director of the Office of Single Family Asset Management, Department of Housing and Urban Development, Room 9178, 451 Seventh Street SW, Washington, DC 20410.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203, National Housing Act as amended (12 U.S.C. 1709, subchapter II, §§ 1707 *et seq.*, 1710, 1715u, 1715z-16) enables HUD/FHA to process applications for HUD single family mortgage insurance. Social Security numbers are not collected or maintained in VDS-Best Ex.

#### PURPOSES OF THE SYSTEM:

VDS-Best Ex will routinely produce property valuations and determine property disposition strategies for the FHA Single Family Forward Mortgage insurance loans over 90 days delinquent and for Secretary-held REO properties.

In operation, the VDS-Best Ex system will be used to:

- Create a point-in-time "value" for the property using an Automated Valuation Model (AVM) suite to finalize and train a customized model that will generate a set of "reserve prices" for each disposition option, with the goal of minimizing the loss to HUD/FHA due to a delinquent property claim.



- Provide a data-based analysis to determine the essential decision factors affecting the projected return of delinquent assets, based on historic FHA data on originations, claims, and servicing actions and costs.

- Compare purchasing offers made for each REO property to ascertain whether to accept a bid, reject a bid, and/or counteroffer based on assessment of the proposed amount, using a valuation that identifies what is the ideal pricing point and discount rate percentages that FHA should consider when selling a property.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

##### *• Defaulted Loan Portfolio:*

Individuals covered by this system are mortgagors with loans insured by HUD/FHA's single family mortgage insurance programs whose associated loans are over 90 days delinquent.

- *Secretary-Held Real Estate Owned (REO) Portfolio:* Defaulted single family mortgage loans where titles have been deeded to the Secretary of HUD and do not have mortgagor-specific information.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Information provided to the VDS—Best Ex system contains the following categories of records in the system:

*Defaulted Loan Portfolio (FHA Mortgagor) Property Characteristic/Attribute Records:* FHA Case Number; Property Address, City, State, Zip Code; Endorsement Code; Mortgage Origination, Endorsement, and Default Dates; Federal Information Processing Standard (FIPS) County Code, FIPS State Code, First-Time Home Buyer Status; Mortgage Loan Amount, Interest Rate, Loan Type (Fixed/ARM); Insurance Status/Rate; Last Payment/Default Date/Unpaid Balance; Due Date of Last Payment + 60 Days; Amortization Begin Date (Calendar Year); Amortization Begin Date (Calendar Quarter); Property Type (Condo/Single Family); Credit Subsidy Cohort; Property Interior/Exterior Features; Default Prosperity Occupancy Status; Loss Mitigation Code Types.

*REO Property (HUD-Held/-Owned Properties) Characteristic/Attribute Records:* FHA Case Number; Endorsement Code; Property Address, City, State, Zip Code; Mortgage Rate/Loan Type; Mortgage Origination, Endorsement, and Default Dates; Amortization Begin Date (Calendar Year); Amortization Begin Date (Calendar Quarter); FIPS State Code; Property/Claim Type; Property Disposition/Acquisition Date; Loan-to-Value Category (New/Old); Interest Rate;

Contract Sales Price; Mortgage Term; Insurance Termination Date; Property Appraisal Estimate; Default Event Codes; Evaluation Codes; Interior Features/External type; Property List Dates; Transactional Records; Conveyed Damaged Indicators.

#### **RECORD SOURCE CATEGORIES:**

Records are transmitted to VDS—Best Ex from the HUD-owned source systems, which obtain records from FHA-approved mortgagees and third-party providers, mortgagors, taxing authorities, insurance companies, and housing counselors as a case flows through the case life cycle from underwriting and counseling, endorsement, loan servicing, loss mitigation, loan termination, and property disposition.

- FHA single family insured mortgage loans over 90-days delinquent is linked to HUD's Single Family Default Monitoring System (SFDMS) data collection requirements.

- Secretary-held Single Family REO properties is linked to HUD's Single Family Asset Management System (SAMS) data collection requirements.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information in this system may be disclosed to authorized entities, as determined to be relevant and necessary, outside the Department of Housing and Urban Development (HUD) as a routine use pursuant to 5 U.S.C. 552a(b)(3):

- a. To appropriate agencies, entities, and persons for disclosures compatible with the purpose for which the records in this system were collected, as set forth by Appendix I—HUD's Routine Use Inventory Notice published in the **Federal Register** (80 FR 81837–81840):

- b. To the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records having sufficient historical or other value to warrant continued preservation by the United States Government, or for inspection under authority of Title 44, Chapter 29, of the United States Code.

- c. To a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of that individual.

- d. To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with HUD, when necessary to

accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Department.

- e. To appropriate agencies, entities, and persons when:

- i. HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

- ii. HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft, or fraud, or hard to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

- iii. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

- f. To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to DOJ is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

- a. *Storage:* Records for this system will be stored electronically in secure facilities and on secure servers. Electronic files are replicated at an off-site disaster recovery location in case of loss of computing capability or other emergency at the primary facility.

Paper-based records are not maintained by VDS—Best Ex.

b. *Retrievability*: Electronic records are retrieved by FHA case number and/or property address as the primary data identifier.

c. *Safeguards*: Records are maintained in a secured computer network and in the contractors' secured facilities. Access is limited to authorized personnel. VDS—Best Ex data and outputs are transmitted via approved Secure File Transfer Protocol methodology.

d. *Retention and Disposal*: In accordance with General Records Schedule 1.1, Financial Management and Reporting Records, Items 010 and 011, the records are maintained for 6 years or when business use ceases. Paper records are not in use. Backup and Recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88, Rev. 1, “Guidelines for Media Sanitization” (December 2014).

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FHA ensures the protection of program participants' PII and mortgagee business sensitive information by ensuring VDS—Best Ex's compliance with HUD and Federal Information Security Management Act (FISMA) security and privacy controls.

#### RECORD ACCESS PROCEDURES:

For Information, assistance, or inquiries about records, contact John Bravacos, Senior Agency Official for Privacy, 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number 202–402–6836. When seeking records about yourself from this system of records or any other HUD system of records, your request must conform with the Privacy Act regulations in 24 CFR part 16. You must first verify your identity, by providing your full name, address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

- Explain why you believe HUD would have information on you.
  - Identify which HUD office you believe has the records about you.
  - Specify when you believe the records would have been created.
  - Provide any other information that will help Freedom of Information Act (FOIA) staff determine which HUD office may have responsive records.
- If your request is seeking records pertaining to another living individual,

you must include a statement obtained from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA office may not conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with regulations.

#### CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, Procedures for Inquiries. Additional assistance may be obtained by contacting John Bravacos, Senior Agency Official for Privacy, 451 Seventh Street SW, Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10110, Washington, DC 20410.

#### NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Privacy Office at the address provided above or to the component's FOIA Officer, whose contact information can be found at <http://www.hud.gov/foia> under “contact”. If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Senior Agency Official for Privacy, HUD, 451 7th Street SW, Room 10139, Washington, DC 20410.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

Not Applicable.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2019–07083 Filed 4–9–19; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GR.19.ZD01.BNEEC.00; OMB Control Number 1028/New]

#### Agency Information Collection Activities; Tribal Perspectives for and Values of Resources Downstream of Glen Canyon Dam

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before June 10, 2019.

**ADDRESSES:** Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact U.S. Geological Survey by email at [lbair@usgs.gov](mailto:lbair@usgs.gov), or by telephone at 928–556–7362.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

**Abstract:** The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.*, requires that the NPS preserve national parks for the use and enjoyment of present and future generations. This collection will provide the Glen Canyon Dam Adaptive Management Program (GCDAMP) with information about tribal stakeholder's perspectives on the condition and protection of natural and cultural resources in Glen and Grand Canyons. Identifying tribal preferences and values for natural and cultural resources in Glen and Grand Canyons is a high priority for the GCDAMP. There are substantial ongoing and prior studies exploring the preferences and values recreationists and the general public hold for resources (for example, whitewater rafting and hydropower) in Glen and Grand Canyons. However, there is almost a complete absence of relevant prior tribal socioeconomic studies exploring this information. This collection will provide information needed to inform decisions on management actions and policies related to operation of Glen Canyon Dam. This notice will cover the development and pretesting of the final survey instrument.

**Title of Collection:** Tribal Perspectives for and Values of Resources

**Downstream of Glen Canyon Dam.**

**OMB Control Number:** 1028–NEW.

**Form Number:** None.

**Type of Review:** New.

**Respondents/Affected Public:** Individuals/households.

**Total Estimated Number of Annual Respondents:** 350.

**Total Estimated Number of Annual Responses:** 300.

**Estimated Completion Time per Response:** 120 minutes.

**Total Estimated Number of Annual Burden Hours:** 700.

**Respondent's Obligation:** Voluntary.

**Frequency of Collection:** One time.

**Total Estimated Annual Non-hour Burden Cost:** We have not identified any "non-hour cost" burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

**David Lytle,**

*Director, Southwest Biological Science Center.*

[FR Doc. 2019–07119 Filed 4–9–19; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[190A2100DD/AAKC001030/  
A0A501010.999900]

### HEARTH Act Approval of Mississippi Band of Choctaw Indians Regulations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** On March 5, 2019, the Bureau of Indian Affairs (BIA) approved the Mississippi Band of Choctaw Indians (Tribe) leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into agricultural, residential, business, wind and solar, wind energy evaluation, and other authorized purposes, leases without further BIA approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone: (202) 208–3615.

#### SUPPLEMENTARY INFORMATION:

#### I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved

the Tribal regulations for the Mississippi Band of Choctaw Indians.

### II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because "tax on the payment of rent is indistinguishable from an impermissible tax on the land." *See Seminole Tribe of Florida v. Stranburg*, No. 14–14524, \*13–\*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of "traditional notions of Indian self-government," requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the

Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to "allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities." 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes "flexibility to adapt lease terms to suit [their] business and cultural needs" and to "enable [Tribes] to approve leases quickly and efficiently." *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that "[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding"). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and

monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Mississippi Band of Choctaw Indians.

Dated: March 5, 2019.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2019–07092 Filed 4–9–19; 8:45 am]

**BILLING CODE 4337–15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[192D0102DR/DS5A300000/  
DR.5A311.IA000118]**

### Draft Environmental Impact Statement for the Proposed Redding Rancheria Fee-to-Trust and Casino Project, Shasta County, California

**AGENCY:** Bureau of Indian Affairs,  
Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, intends to file a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency (EPA) in connection with the Redding Rancheria's (Tribe) application requesting that the United States acquire approximately 232 acres of land in trust in Shasta County, California, for the construction and operation of a casino resort.

**DATES:** Written comments on the DEIS must arrive within 45 days after EPA publishes its Notice of Availability in the **Federal Register**. The date and location of the public hearing on the DEIS will be announced at least 15 days in advance through a notice to be published in local newspapers (Redding Record Searchlight and Sacramento Bee) and online at <http://www.reddingeis.com>.

**ADDRESSES:** You may mail or hand-deliver written comments to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and "DEIS Comments, Redding Rancheria Project" on the first page of your written comments. You may also

submit comments through email to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, at [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov). If emailing comments, please use "DEIS Comments, Redding Rancheria Project" as the subject of your email.

### FOR FURTHER INFORMATION CONTACT:

Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W–2820, Sacramento, California 95825; telephone: (916) 978–6165; email: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov). Information is also available online at <http://www.reddingeis.com>.

**SUPPLEMENTARY INFORMATION:** The Tribe submitted an application to the Department of the Interior (Department) requesting the placement of approximately 232 acres of fee land in trust by the United States upon which the Tribe would construct a casino resort. The facility would include an approximately 69,500 square foot casino, an approximately 250-room hotel, an event/convention center, an outdoor amphitheatre, a retail center, and associated parking and infrastructure. The new facility would replace the Tribe's existing casino, and the existing casino buildings would be converted to a different Tribal use.

Accordingly, the proposed action for the Department is the acquisition requested by the Tribe. The proposed fee-to-trust property is located in an unincorporated part of Shasta County, California, approximately 1.6 miles northeast of the existing Redding Rancheria, and about two miles southeast of downtown Redding. The proposed trust property includes seven parcels, bound by Bechelli Lane on the north, private properties to the south, the Sacramento River on the west, and Interstate 5 on the east. The Shasta County Assessor's parcel numbers (APNs) for the property are 055–010–011, 055–010–012, 055–010–014, 055–010–015, 055–050–001, 055–020–004 and 055–020–005.

The following alternatives are considered in the DEIS: (1) Proposed Project; (2) Proposed Project with No Retail Alternative; (3) Reduce Intensity Alternative; (4) Non-Gaming Alternative; (5) Anderson Site Alternative; (6) Expansion of Existing Casino Alternative; and (7) No Action Alternative. Environmental issues addressed in the EIS include land resources; water resources; air quality; noise; biological resources; cultural/historical/archaeological resources; resource use patterns; traffic and transportation; public health and safety;

hazardous materials and hazardous wastes; public services and utilities; socioeconomic; environmental justice; visual resources/aesthetics; and cumulative, indirect, and growth-inducing effects.

**Locations Where the DEIS is Available for Review:** The DEIS is available for review during regular business hours at the BIA Pacific Regional Office at the address noted above in the **ADDRESSES** section of this notice, and the Redding Public Library, 1100 Parkview Avenue, Redding, California. The DEIS is also available online at <http://www.reddingeis.com>. To obtain a compact disc copy of the DEIS, please provide your name and address in writing or by phone to Chad Broussard, Bureau of Indian Affairs, Pacific Regional Office. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

**Public Comment Availability:** Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

**Authority:** This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4345 *et seq.*), and the Department of the Interior National Environmental Policy Act Regulations (43 CFR part 46), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 5, 2019.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2019-07080 Filed 4-9-19; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[19X R4079V4 RX.12255301.3000000 AZA25613]

#### Public Land Order No. 7877; Extension of Public Land Order No. 7384; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Land Order.

**SUMMARY:** This Public Land Order (PLO) extends the duration of the withdrawal created by PLO No. 7384 for an additional 20-year term. PLO No. 7384 would otherwise expire on April 19, 2019. This extension is necessary to continue to protect the value of the capital investments, water-oriented developments, and dispersed recreation in the Bureau of Reclamation's (BOR) Lake Pleasant expansion area. PLO No. 7384 withdrew 1,988.27 acres of public lands from settlement, sale, location, and entry under the general public land laws, including the United States mining laws, but not from leasing under the mineral leasing laws for a 20-year period. The lands have been and will remain open to mineral and geothermal leasing.

**DATES:** This PLO takes effect on April 20, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sara Ferreira, Land Law Examiner, at telephone 602-417-9598 or by email at [sferreir@blm.gov](mailto:sferreir@blm.gov), Bureau of Land Management, Arizona State Office, One North Central Ave., Suite 800, Phoenix, AZ 85004. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Ms. Ferreira. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This Order extends the existing withdrawal to continue to protect the capital investments, water-oriented developments, and dispersed recreation resources in the Lake Pleasant Expansion area.

#### ORDER

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No 7384, (64 FR 19386, (1999)), which withdrew public lands from settlement, sale, location, and entry under the

general public land laws, including the United States mining laws, but not from leasing under the mineral leasing laws is hereby extended for an additional 20-year period to protect the Bureau of Reclamation's Lake Pleasant expansion area.

2. The withdrawal extended by this Order will expire on April 19, 2039, unless as a result of review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines the withdrawal shall be further extended.

Dated: April 3, 2019.

**Joseph R. Balash,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2019-07030 Filed 4-9-19; 8:45 am]

**BILLING CODE 4332-90-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[19X LLUTW01000 LXX0000.XX0000, UTU-78501]

#### Notice of Proposed Withdrawal Extension, Diamond Fork System, Bonneville Unit of the Central Utah Project, Public Land Order No. 7422, and Opportunity for Public Meeting, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary—Land and Minerals Management (ASLM) on behalf of the Central Utah Project Completion Act Office (CUPCAO), proposes to extend the duration of Public Land Order (PLO) No. 7422 for an additional 20-year term. PLO No. 7422 withdrew approximately 2,795 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project. This Notice advises the public of an opportunity to comment on the proposed withdrawal extension and to request a public meeting. This Notice also corrects the projects acreage figure for the lands and corrects the Bureau of Land Management's (BLM) serial register number assigned to the official case record of the withdrawal.

**DATES:** Comments and requests for a public meeting must be received by July 9, 2019.

**ADDRESSES:** All comments and public meeting requests may be made by any of the following methods:

- *Email:* [utslmail@blm.gov](mailto:utslmail@blm.gov).
- *Mail:* BLM Salt Lake Field Office, Attention: Diamond Fork Withdrawal Extension Project, 2370 S Decker Lake Blvd., West Valley City, Utah 84119.

**FOR FURTHER INFORMATION CONTACT:**

Allison Ginn, Assistant Field Manager, BLM Salt Lake Field Office, 801-977-4300, or by email [utslmail@blm.gov](mailto:utslmail@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. Replies are provided during normal business hours.

**SUPPLEMENTARY INFORMATION:** The ASLM proposes to extend the withdrawal established by PLO No. 7422 for an additional 20-year term to provide for the construction, operation, and maintenance of the Diamond Fork System. A land survey report of PLO No. 7422 (64 FR 71467, (1999)) corrects the acreage withdrawn from 2,795 acres to 2,714.22 acres with no change to the legal land description. PLO No. 7422 is incorporated herein by reference with the official record maintained under Utah Serial Number UTU-78501. PLO No. 7422 will expire on December 20, 2019, unless extended. Background information on the Central Utah Project can be accessed online at: <https://www.cupcao.gov>.

The life of the Diamond Fork System is expected to exceed 100 years, necessitating an extension of the current withdrawal. The lands withdrawn from location and entry under the United States mining laws would continue to be available for leasing under the mineral leasing laws. The withdrawal made by PLO No. 7422 does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

The use of a right-of-way, interagency agreement, or cooperative agreement would not constrain nondiscretionary uses.

There are no suitable alternative sites since the land described in PLO No. 7422 contains the developed infrastructure of the Diamond Fork System.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Any persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Salt Lake Field Office at the address stated above. The petition/application and the case file pertaining to the proposed withdrawal extension are available for public inspection at the BLM Salt Lake Field Office, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and emergency closures.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Salt Lake Field Office at the address stated above on or before July 9, 2019. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register**, a newspaper of general circulation, and posted on the BLM website ([www.blm.gov/utah](http://www.blm.gov/utah)) at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Authority:** 43 CFR 2310.3-1.

Dated: April 3, 2019.

**Joseph R. Balash,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2019-07034 Filed 4-9-19; 8:45 am]

**BILLING CODE 4310-DQ-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1154]

### Certain Child Carriers and Components Thereof; Institution of Investigation

**AGENCY:** U.S. International Trade Commission

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 6, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of LILLEbaby LLC of Golden, Colorado. LILLEbaby filed supplements to the complaint on March 25 and April 2, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain child carriers and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,172,116 (“the ‘116 patent’”) and U.S. Patent No. 8,424,732 (“the ‘732 patent’”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order or, in the alternative, limited exclusion orders. The complainant also requests that the Commission issue cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Pathenia M. Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2018).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on April 4, 2019, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 5–7, 9, 11, 14–16, 18–20, and 23–25 of the '116 patent and claims 1–14 of the '732 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "child carriers wearable on the transporting individual";

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant are:

LILLEbaby LLC, 700 12th Street, Golden, Colorado 80401.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

BabyBjorn AB, Kulltorpsvägen 49, Lanna SE–333 74 Bredaryd, Sweden.

BabyBjorn Inc., 1270 Broadway, Room 508, New York, New York 10001.

BabySwede LLC, 1157 Rockside Road, Cleveland, Ohio 44134.

Baby Tula LLC a/k/a New Baby Tula LLC, 2640 Financial Ct., San Diego, California 92117.

Boba Inc. d/b/a Beco Baby Carrier, 2033 11th Street, # 1, Boulder, Colorado 80302.

ByKay BV, Kruisbergsewwg 44a, Wijchen, Gelderland, 6601 DD, The Netherlands.

Artsana USA, Inc. f/k/a Chicco USA Inc., 1826 William Penn Way, Lancaster, Pennsylvania 17601.

Cybex GmbH, Riedingerstr 18, Bayreuth 95448, Germany.

Columbus Trading Partners USA, Inc., 560 Harrison Avenue, Boston, Massachusetts 02118.

The Ergo Baby Carrier Inc., 617 W. 7th Street, Suite 1000, Los Angeles, California 90017.

Blue Box OpCo LLC d/b/a Infantino, 10025 Mesa Rim Road, San Diego, California 92121.

Isara, Deneris Trade SRL, Str. Tautului Nr 21g Apt. 1, Floresti, Cluj 407280, Romania.

Jonobaby Babytragen, Gutenbergstraße 17, 14467 Potsdam, Germany.

Kokadi GmbH & Co. KG, Domagkstr. 7, 85551 Kirchheim B., Munich, Germany.

Lenny Lamb Sp. z o.o. Sp.K, Domaniewska 37/2.43, 02–672, Warsaw, Poland.

Minimonkey BV, Larikslaan 9, Amsterdam, Noord-Holland, 1087 SC, The Netherlands.

Mountain Buggy USA a/k/a Phil & Teds USA Inc., 221 Jefferson Street, Fort Collins, Colorado 80524.

Soul US Inc., #82/2 New Timbervard Layout, Mysore Road Bangalore, Bangalore KA 560026, India.

Stokke AS, Parkgata 6, Aalesund Møre og Romsda N–6001, Norway.

Stokke LLC, 5 High Ridge Park, Suite 105, Stamford, Connecticut 06905.

Tingtao Sunveno Co., Ltd., No. 11 Huqing Road, Sifang District, Qingdao, Shandong 266044, China.

Wuxi Kangarouse Trading Co. Ltd. Enterprises d/b/a Kangarouse, 8–1321, East Xihu Rd., Wuxi, Jiangsu Province 214000, China.

Jing Jiang Dimarco Packaging & Gifts Co. Ltd., No.21st, Xinyi Road, Chengbei Section, Jingjiang Jiangsu 214500, China.

Jiangsu Matrix Textile Co., Ltd., No.21st, Xinyi Road, Chengbei Section, Jingjiang Jiangsu 214500, China.

Quanzhou Mingrui Bags Co. Ltd., Room 301, No.3 Building, East JinPu Road, Hi-Tech Park JiangNan, FuQiao, Quanzhou Fujian 362000, China.

L'Echarpe Porte Bonheur, Inc. d/b/a Chimparoo, 7–25 Rue de Lauzon, Boucherville, QC J4B 1E7, Canada.

Britax Child Safety, Inc., 4140 Pleasant Road, Fort Mill, South Carolina 29708.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such

responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the Administrative Law Judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 5, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–07103 Filed 4–9–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1153]

### Certain Bone Cements, Components Thereof and Products Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Heraeus Medical LLC of Yardley, Pennsylvania and Heraeus Medical GmbH of Germany. A letter amending the complaint was filed on March 22, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, and in the sale of certain bone cements, components thereof and products containing the same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States or to prevent the establishment of such an industry.

The complainants request that the Commission institute an investigation



and, after the investigation, issue a limited exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on April 4, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain bone cements, components thereof and products containing the same by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “(1) Biomet Bone Cement R, Refobacin® Bone Cement R and other bone cements designed and manufactured by the proposed Respondents; (2) the components of the

accused bone cements products, which are the bone cement powder, liquid and the raw materials that comprise the powder and liquid; and (3) the ClearMix™ Vacuum Mixing Systems and accessories, the Compact Cement Vacuum Mixing Systems and Miller™ Cement Delivery Systems and accessories, the Optipac® mixing system, mixing bowls, plugs, bone preparation kits, molds, diagnostic kits, and other mixing and delivery systems made or sold by the proposed Respondents that contain or are used with the proposed Respondents' bone cements.”

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

- (a) The complainants are:  
 Heraeus Medical LLC, 770 Township Line Road, Yardley, PA 19067.  
 Heraeus Medical GmbH, Philipp-Reis-Straße, 8-13, 61273 Wehrheim, Germany.
- (b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:  
 Zimmer Biomet Holdings, Inc., 345 East Main Street, Warsaw, IN 46580.  
 Biomet, Inc., 56 East Bell Drive, Warsaw, IN 46582.  
 Zimmer Orthopaedic Surgical Products, Inc., 200 West Ohio Avenue, Dover, OH 44622.  
 Zimmer Surgical, Inc., 200 West Ohio Avenue, Dover, OH 44622.  
 Biomet France S.A.R.L., 58 Avenue de Lautagne, BP 75, Valence, 26903, France.  
 Biomet Deutschland GmbH, Gustav-Krone-Straße 2, 14167 Berlin, Germany.  
 Zimmer Biomet Deutschland GmbH, Merzhauser Str. 112, 79100 Freiburg im Breisgau, Germany.  
 Biomet Europe B.V., Toermalijnring 600, Dordrecht, 3316 LC, Netherlands.  
 Biomet Global Supply Chain Center B.V., Toermalijnring 600, Dordrecht, 3316 LC, Netherlands.  
 Zimmer Biomet Nederland B.V., Toermalijnring 600, Dordrecht, 3316 LC, Netherlands.  
 Biomet Orthopedics, LLC, 56 East Bell Drive, Warsaw, IN 46582.  
 Biomet Orthopaedics Switzerland GmbH, Riedstraße 6, Dietikon, 8953, Switzerland.
- (c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and
- (4) For the investigation so instituted, the Chief Administrative Law Judge,

U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 5, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-07102 Filed 4-9-19; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1152]

### Certain Vehicle Security and Remote Convenience Systems and Components Thereof: Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of DEI Holdings, Inc. and Directed, LLC of Vista, California, and Directed Electronics Canada Inc. of Canada. The complaint alleges violations of section 337 based upon the importation into the United States, the



sale for importation, and the sale within the United States after importation of certain vehicle security and remote convenience systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,191,053 (the “’053 patent”), U.S. Patent No. 7,483,783 (the “’783 patent”), U.S. Patent No. 7,646,285 (the “’285 patent”), U.S. Patent No. 7,898,386 (the “’386 patent”), and U.S. Patent No. 8,378,800 (the “’800 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

**Addresses:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205-1802.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2018).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on April 4, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation,

or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–9, 11–14, 16–19, 21–24, 26, 29–32, 34, 35, 38–40, 81–89, 91–94, 96, 99, and 100 of the ’053 patent; 1–3, 6, 7, 18, 25, 52, 53, 56, and 57 of the ’783 patent; claims 1–9 and 12–16 of the ’386 patent; claims 1–3, 17, 39, 40 and 52 of the ’285 patent, and claims 1–6, 8, and 11–15 of the ’800 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “user smartphones running software applications or handheld key fobs with software for sending commands to vehicles; vehicle-installed modules that receive commands from the smartphones or key fobs and communicate with vehicle electronics to execute the commands; and vehicle accessories that are turned on/off or otherwise controlled by the smartphones, key fobs, and/or in-vehicle modules”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:  
DEI Holdings, Inc., Directed, LLC, 1 Viper Way, Vista, California 92081.  
Directed Electronics Canada Inc., 2750 Alphonse-Gariepy St., Lachine, Quebec, H8T 3M2, Canada.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:  
Automotive Data Solutions, Inc., 8400 Bougainville, Montreal, QC H4P 2G1, Canada.

Firstech, LLC, 21903 68th Avenue South, Kent, Washington 98032.  
AAMP of Florida, Inc., 15500 Lightwave Drive, Suite 202, Clearwater, Florida 33760.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of institution of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of

Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of institution of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 5, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-07101 Filed 4-9-19; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1075]

### Certain Electrochemical Glucose Monitoring Systems and Components Thereof; Commission Determination To Affirm an Initial Determination Granting a Motion for Summary Determination of Non-Infringement of the Asserted Patents; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (Order No. 33) granting a motion for summary determination of non-infringement of the asserted patents and the presiding administrative law judge’s (“ALJ”) underlying orders. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW,

Washington, DC 20436, telephone 202–708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on October 25, 2017, based on a complaint filed on September 18, 2017, on behalf of Dexcom, Inc. of San Diego, California (“Dexcom”). 82 FR 49420 (Oct. 25, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electrochemical glucose monitoring systems and components thereof by reason of infringement of one or more of claims of U.S. Patent Nos. 9,724,045 and 9,750,460. The notice of investigation named as a respondent AgaMatrix, Inc. of Salem, New Hampshire (“AgaMatrix”). The Office of Unfair Import Investigations was not named as a party in the investigation.

On May 10, 2018, the ALJ issued Order No. 26, granting-in-part a motion by AgaMatrix to strike portions of Dexcom's expert reports. Order No. 26 struck, in relevant part, certain portions of an expert report relating to whether the accused products meet the “film” term of the “enzyme-containing film” limitation of the asserted claims and precluded Dexcom from relying on the arguments and theories described in the struck portions of the expert report during the investigation.

On May 17, 2018, AgaMatrix filed a motion for summary determination of non-infringement of the asserted patents on the basis that Dexcom cannot prove that the accused products directly or indirectly infringe any of the asserted claims. On May 29, 2018, Dexcom opposed the motion. On June 1, 2018, AgaMatrix moved for leave to file a reply in support of its motion. On June

6, 2018, Dexcom opposed the motion for leave.

On June 7, 2018, the ALJ issued the subject initial determination (“ID”) (Order No. 33), granting AgaMatrix's motion for summary determination of non-infringement with respect to direct infringement but denying the motion with respect to indirect infringement. The ID also denied AgaMatrix's motion for leave to file a reply in support of its motion and stayed the procedural schedule pending review of the ID.

On June 18, 2018, Dexcom filed a petition for review of the ID's findings on direct infringement and Order No. 26. On June 25, 2018, AgaMatrix filed its opposition.

On July 23, 2018, the Commission determined to review the subject ID in its entirety, as well as the underlying orders. Notice (July 23, 2018).

Having reviewed the record in this investigation, including the subject ID, the petition for review, and response thereto, the Commission has determined to affirm Order No. 33's summary determination of non-infringement and the ALJ's underlying orders. Commissioner Schmidlein dissents from the majority's decision. Her views have been filed on EDIS.

The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 4, 2019.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2019–07047 Filed 4–9–19; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1137]

### Certain Semiconductor Lithography Systems and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review a March 12, 2019 initial determination (“ID”) (Order

No. 9) terminating this investigation in its entirety based on a settlement agreement. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

**SUPPLEMENTARY INFORMATION:** On October 23, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by ASML Netherlands B.V. of Veldhoven, the Netherlands, ASML US, L.P. of Chandler, AZ, and ASML US, LLC of Chandler, AZ (collectively, “ASML”). 83 FR 53498 (Oct. 23, 2018). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,295,283, 7,403,264, and 9,188,880. The Commission's notice of investigation named as respondents Nikon Corporation of Tokyo, Japan, Nikon Precision Inc. of Belmont, California, and Nikon Research Corporation of America of Belmont, California (collectively, “Nikon”). *Id.* The Office of Unfair Import Investigations is not a party in this investigation. *Id.*

On February 25, 2019, ASML and Nikon jointly moved pursuant to Commission Rule 210.21(b) (19 CFR 201.21(b)) to terminate this investigation in its entirety based on a settlement agreement.

On March 12, 2019, the presiding administrative law judge issued Order No. 9, the subject ID, which grants the motion. The ID finds that the joint motion complies with Commission Rule 210.21(b). The ID additionally finds that terminating the investigation is in the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID. This investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 4, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-07046 Filed 4-9-19; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-365-366 and 731-TA-734-735 (Fourth Review)]

### Certain Pasta From Italy and Turkey

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the countervailing duty orders and antidumping duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on August 1, 2018 (83 FR 37517) and determined on November 5, 2018 that it would conduct expedited reviews (84 FR 4535, February 15, 2019).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 4, 2019.<sup>3</sup> The views of the Commission are contained in USITC Publication 4876 (April 2019), entitled *Certain Pasta from Italy and Turkey: Investigation Nos. 701-TA-365-*

*366 and 731-TA-734-735 (Fourth Review).*

By order of the Commission.

Issued: April 4, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-07045 Filed 4-9-19; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0006]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension, With Change, of a Currently Approved Collection Application and Permit for Importation of Firearms, Ammunition and Defense Articles—(ATF Form 6—Part II (5330.3B))

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until June 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Desiree M. Dickinson, ATF Firearms and Explosives Imports Branch either by mail at 244 Needy Road, Martinsburg, WV 25405, or by email at [desiree.dickinson@atf.gov](mailto:desiree.dickinson@atf.gov), or by telephone at 304-616-4584.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection* (check justification or form 83):

Extension, with change, of a currently approved collection.

(2) *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF Form 6—Part II (5330.3B).

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Individuals or households.

*Other (if applicable):* Federal Government, State, Local or Tribal Government.

*Abstract:* The information on the Application and Permit for Importation of Firearms, Ammunition and Defense Articles—(ATF Form 6—Part II (5330.3B)) is used to determine if the article(s) described in the application qualifies for importation by the importer, and to serve as the authorization for the importer.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will utilize this form, and it will take each respondent approximately 30 minutes to complete this form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 400 (# of respondents) \* 1 (# of times per response) \* .5 (30 minutes).

*If additional information is required contact:* Melody Braswell, Department

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Commissioner Meredith M. Broadbent dissenting with respect to the imports of certain pasta from Turkey.

<sup>3</sup> Due to the lapse in appropriations and ensuing cessation of Commission operations, all import injury reviews conducted under authority of Title VII of the Act accordingly have been tolled pursuant to 19 U.S.C. 1675(c)(5).

Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 5, 2019.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2019-07056 Filed 4-9-19; 8:45 am]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1122-NEW]

### Agency Information Collection Activities; Proposed eCollection eComments Requested

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until June 10, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202-514-5430 or [Catherine.poston@usdoj.gov](mailto:Catherine.poston@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey of VAWA-funded Discretionary Grantees about Program Evaluation Practices and Results.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* 1122-XXXX.

*Sponsoring agency:* U.S. Department of Justice, Office on Violence Against Women, which has supplied grant funds to the Violence Against Women Act Measuring Effectiveness Initiative (VAWA MEI) for Ongoing Training and Technical Assistance to Support Grantee Reporting for a project of which the proposed survey is one component.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* 3,500 staff of federal discretionary grant-funded entities.

Established in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices that combat domestic/dating violence, sexual assault, and stalking. OVW administers both formula-based and discretionary (i.e., competitively awarded) grant programs, established under the Violence Against Women Act (VAWA) and subsequent legislation. Recipients of OVW funds work through a coordinated community response to support victims and hold perpetrators accountable.

OVW is implementing a new effort to better measure the effectiveness of VAWA-funded grant projects. A critical step in that effort is to understand how grantees evaluate their approaches to—and identify promising practices for—serving victims of domestic/sexual violence and administering justice in their cases. Therefore, the purpose of this collection is to find out if VAWA-funded discretionary grantees have conducted, or are currently conducting, evaluations of their programs and what the results of those evaluations were. This information will assist OVW and VAWA MEI in enhancing OVW's grantee performance monitoring system. OVW's current system collects a large quantity of data, not all of which is optimally useful for monitoring VAWA-

funded projects and gauging grantees' success. A survey to understand how grantees themselves assess their effectiveness will help OVW understand which practices are showing promise in the field, and it will help OVW determine how performance reporting requirements could be revised to better capture indicators of success and reduce reporting burden on grantees.

The affected public includes the OVW award points-of-contact from the approximately 2,000 VAWA-funded discretionary grantees nationwide.

Because grantee points-of-contact are responsible for fiscal and programmatic oversight of how their grant dollars are used, they typically will have knowledge of whether their programs have conducted any evaluations of their programs' implementation or the outcomes of their programs for the people and communities they serve. If points-of-contact have not been directly responsible for evaluation efforts, they are likely to know who within their organization may have managed evaluations. Therefore, these points-of-contact are a key source of information from the field about strategies that are showing promise for keeping victims safe and holding offenders accountable.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take less than 30 minutes to complete this one-time survey, which will ask respondents about any efforts to evaluate their programs, and the results of those evaluations. The survey will be a mix of multiple-choice and narrative response questions.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden of this one-time data collection could be up to 1,000 hours. A point-of-contact from every VAWA-funded discretionary grantees will be invited, but not required, to respond. ~2000 discretionary grantees \* 30-minute completion time = 60,000 minutes, or 1,000 hours.

*If additional information is required contact:* Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: April 5, 2019.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2019-07058 Filed 4-9-19; 8:45 am]

**BILLING CODE 4410-FX-P**

**DEPARTMENT OF JUSTICE****[OMB Number 1110-0011]****Agency Information Collection Activities; Proposed eCollection Comments Requested; Extension, Without Change, of a Currently Approved Collection**

**AGENCY:** Department of Justice Violent Criminal Apprehension Program (ViCAP), Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Federal Bureau of Investigation, Critical Incident Response Group will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995.

**DATES:** The Department of Justice encourages public comment and will accept input until June 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Nathan Graham, Program Manager, Federal Bureau of Investigation, Critical Incident Response Group, ViCAP, FBI Academy, Quantico, Virginia 22135; facsimile (703) 632-4239.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

*e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* ViCAP Case Submission Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is FD-676. The applicable component within the Department of Justice is the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, state, local, and tribal government law enforcement agencies charged with the responsibility of investigating violent crimes.

*Abstract:* Established by the Department of Justice in 1985, ViCAP serves as the national repository for violent crimes; specifically; Homicides (and attempts) that are known or suspected to be part of a series and/or are apparently random, motiveless, or sexually oriented. Sexual assaults that are known or suspected to be part of a series and/or are committed by a stranger. Missing persons where the circumstances indicate a strong possibility of foul play and the victim is still missing. Unidentified human remains where the manner of death is known or suspected to be homicide. Comprehensive case information submitted to ViCAP is maintained in the ViCAP Web National Crime Database and is automatically compared to all other cases in the databases to identify potentially related cases.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Of the approximately 18,000 government law enforcement agencies that are eligible to submit cases, it is estimated that thirty to fifty percent will actually submit cases to ViCAP. The time burden of the respondents is less than 60 minutes per form.

6. *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 5, 2019.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2019-07059 Filed 4-9-19; 8:45 am]

**BILLING CODE 4410-02-P**

**DEPARTMENT OF JUSTICE****[OMB Number 1122-NEW]****Agency Information Collection Activities; Proposed eCollection Comments Requested**

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until June 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202-514-5430 or [Catherine.poston@usdoj.gov](mailto:Catherine.poston@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey of VOCA and VAWA STOP Administrators about Sexual Assault Medical Forensic Exam Payment Policies and Practices.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* 1122-XXXX. Sponsoring agency: U.S. Department of Justice, Office on Violence Against Women, which has supplied grant funds to the International Association of Forensic Nurses (IAFN) for a project of which the proposed survey is one component.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Established in 1995, OVW administers financial and technical assistance to communities across the country that are developing programs, policies, and practices that combat domestic/dating violence, sexual assault, and stalking. OVW administers both formula-based and discretionary grant programs, established under the Violence Against Women Act (VAWA) and subsequent legislation. Recipients of OVW funds work through a coordinated community response to support victims and hold perpetrators accountable.

The purpose of this collection is to find out how states/territories are paying for sexual assault medical forensic exams, meaning the funding sources they use for this purpose and the reimbursement procedures they follow. The information will be used by OVW and IAFN to determine what training and technical assistance (TTA) states need to ensure that sexual assault victim-patients are not charged for their exams. The affected public includes a maximum of 112 employees of states and territories who serve as Victims of Crime Act (VOCA) administrators and VAWA STOP administrators. VOCA administrators manage funds made available from the Crime Victims Fund (CVF) for victim assistance and victim compensation. STOP administrators manage the distribution and monitoring of OVW STOP Formula Program funds, which are distributed to states/territories to support law enforcement, prosecutors, victim services providers, and courts in responding to sexual and domestic violence. VOCA and STOP administrators must ensure that funds are subgranted, spent, and reported in compliance with all applicable

regulations and requirements. In some states, the designated VOCA administrator and STOP administrator is the same individual.

Because VOCA and STOP administrators are responsible for how federal grant dollars for combatting violence against women are used, they typically have thorough knowledge of how sexual assault medical forensic exams—for which VAWA prohibits charging victims—are paid for in their states. Therefore, these administrators are a key source of information about state policies and procedures for reimbursing healthcare providers for exams, as well as the funding sources used for this purpose. Furthermore, VOCA and VAWA administrators may have considerable insight into which strategies are showing promise in their states, and what approaches have proved challenging.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the respondents approximately 30 minutes to complete this one-time survey, which will ask respondents about existing laws, policies, and procedures for paying for medical forensic exams, what aspects of the exam are paid for, the funding sources used to reimburse healthcare providers for exams, and what is and is not working with the current approach. The survey will be a mix of multiple-choice and narrative response questions.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden of this one-time data collection is 28 hours. While VOCA and STOP administrators will be invited to provide responses, only one response per state/territory is needed. 56 states/territories \* 30-minute completion time = 1,680 minutes, or 28 hours.

*If additional information is required contact:* Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: April 5, 2019.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2019-07057 Filed 4-9-19; 8:45 am]

**BILLING CODE 4410-FX-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Retaining Employment and Talent After Injury/Illness Network [RETAIN] Demonstration Project and Evaluation

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Disability Employment Policy (ODEP) sponsored information collection request (ICR) proposal titled, “Retaining Employment and Talent After Injury/Illness Network [RETAIN] Demonstration Project and Evaluation,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before May 10, 2019.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201902-1220-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-1220-002) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ODEP, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks PRA authority for the Retaining

Employment and Talent After Injury/Illness Network [RETAIN] Demonstration Project and Evaluation information collection. The RETAIN Demonstration Projects are a collaborative effort led by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) in partnership with DOL's Employment and Training Administration (ETA) and the Social Security Administration (SSA). The RETAIN projects will test the impact of early intervention strategies that improve stay-at-work/return-to-work (SAW/RTW) outcomes of individuals who experience work disability while employed. "Work disability" is defined as an injury, illness, or medical condition that has the potential to inhibit or prevent continued employment or labor force participation. SAW/RTW programs succeed by returning injured or ill workers to productive work as soon as medically possible during their recovery process and by providing interim part-time or light-duty work and accommodations, as necessary. The RETAIN Demonstration Projects are modeled after promising programs operating in Washington state, including the Centers of Occupational Health and Education (COHE), the Early Return to Work (ERTW), and the Stay at Work programs. While these programs operate within the state's workers' compensation system and are available only to people experiencing work-related injuries or illnesses, the RETAIN Demonstration Projects provide opportunities to improve SAW/RTW outcomes for both occupational and non-occupational injuries and illnesses of people who are employed, or at a minimum in the labor force, when their injury or illness occurs. The Consolidated Appropriations Act of 2016 section 107 authorizes this information collection. See Public Law 115-245.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. For additional information, see the related

notice published in the **Federal Register** on 06/22/2018 (83 FRN 121).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201902-1230-001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-ODEP.

*Title of Collection:* Retaining Employment and Talent After Injury/Illness Network [RETAIN] Demonstration Project and Evaluation.

*OMB ICR Reference Number:* 201902-1230-001.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 5,333.

*Total Estimated Number of Responses:* 5,333.

*Total Estimated Annual Time Burden:* 1,778 hours.

*Total Estimated Annual Other Costs Burden:* \$146,817.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: April 4, 2019.

**Frederick Licari,**

*Departmental Clearance Officer (Acting).*

[FR Doc. 2019-07037 Filed 4-9-19; 8:45 am]

**BILLING CODE 4510-27-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2009-0025]

#### Underwriters Laboratories, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Underwriters Laboratories, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before April 25, 2019.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2009-0025, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and OSHA docket number (OSHA-2009-0025). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <https://www.regulations.gov>. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the



docket, go to <https://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

**Extension of comment period:** Submit requests for an extension of the comment period on or before April 25, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

**Press inquiries:** Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

**General and technical information:** Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Notice of the Application for Expansion

OSHA is providing notice that Underwriters Laboratories, Inc., (UL) is applying to expand the current recognition as a NRTL. UL requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is

not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/dts/otpc/nrtl/index.html>. UL currently has fourteen facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062. A complete list of UL sites recognized by OSHA is available at <https://www.osha.gov/dts/otpc/nrtl/ul.html>.

#### II. General Background on the Application

UL submitted an application, dated August 24, 2016, (OSHA-2009-0025-0024) to expand recognition to include three additional test standards. This application was revised on July 24, 2018 to note the titles of the standards requested in the original application (OSHA-2009-0025-0025). OSHA staff performed detailed analyses of the application packets and other pertinent information. OSHA did not perform any on-site reviews in relation to these application.

Table 1, below, lists the appropriate test standards found in UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60079-2 ...	Standard for Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosure "p".

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 60079-25	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079-31	Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t".

#### III. Preliminary Findings on the Application

UL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and related material indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of these three test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These materials also are available online at <https://www.regulations.gov> under Docket No. OSHA-2009-0025.

OSHA staff will review all comments to the docket submitted in a timely manner and after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant UL's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.



OSHA will publish a public notice of this final decision in the **Federal Register**.

#### Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 3, 2019.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–07038 Filed 4–9–19; 8:45 am]

BILLING CODE 4510–26–P

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

##### Modification to the List of Appropriate NRTL Program Test Standards and the Scopes of Recognition of Several NRTLs

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces its final decision to: (1) Add a new test standard to the Nationally Recognized Testing Laboratories (NRTL) Program's list of appropriate test standards; (2) delete or replace several test standards from the NRTL Program's list of appropriate test standards; and (3) update the scope of recognition of several NRTLs.

**DATES:** The actions contained in this notice will become effective on April 10, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693–2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA's web page includes information about the NRTL Program

(see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The NRTL Program recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations perform testing and certification for purposes of the program, to U.S. consensus-based product-safety test standards. The products covered by the NRTL Program consist of those items for which OSHA safety standards require “certification” by a NRTL. The requirements affect electrical products and 38 other types of products. OSHA does not develop or issue these test standards, but generally relies on standards development organizations (SDOs), which develop and maintain the standards using a method that provides input and consideration of views of industry groups, experts, users, consumers, governmental authorities and others having broad experience in the safety field involved.

##### *Addition of New Test Standards to the NRTL List of Appropriate Test Standards*

Periodically, OSHA will add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain SDOs; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties that a new test standard may be appropriate to add to the list of appropriate standards. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, addresses a type of product that no standard previously covered, or is otherwise new to the NRTL Program.

##### *SDO Deletion and Replacement of Test Standards*

The NRTL Program regulations require that appropriate test standards be maintained and current (29 CFR 1910.7(c)). A test standard withdrawn by a standards development organization is no longer considered an appropriate test standard (Directive, App. C.XIV.B). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards. However, SDOs frequently will designate a replacement standard for withdrawn standards. OSHA will recognize a NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard.

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in a NRTL's scope are comparable (*i.e.*, are completely or substantially identical) to the requirements in the replacement test standard. If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), the replacement test standard is comparable to the existing test standard(s), then OSHA can add the replacement test standard to affected NRTLs' scopes of recognition. If OSHA's analysis shows the replacement test standard requires an additional or different technical capability, or the replacement test standard is not comparable to any existing test standards, each affected NRTL seeking to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability.

##### *Other Reasons for Removal of Test Standards From the NRTL List of Appropriate Test Standards*

OSHA may choose to remove a test standard from the NRTL list of appropriate test standards based on an internal review in which NRTL Program staff review the NRTL list of appropriate test standards to determine if the test standards conform to the definition of an appropriate test standard defined in NRTL Program regulations and policy. There are several reasons for removing a test standard based on this review. First, a document that provides the methodology for a single test is a test method rather than an appropriate test

standard (29 CFR 1910.7(c)). As stated above, a test standard must specify the safety requirements for a specific type of product(s). A test method, however, is a “specified technical procedure for performing a test” (Directive, App. B). As such, a test method is not an appropriate test standard. While a NRTL may use a test method to determine if certain safety requirements are met, a test method is not itself a safety requirement for a specific product category.

Second, a document that focuses primarily on usage, installation, or maintenance requirements would also not be considered an appropriate test standard (Directive, App. D.IV.B). In some cases, however, a document may also provide safety test specifications in addition to usage, installation, and maintenance requirements. In such cases, the document would be retained as an appropriate test standard based on the safety test specifications.

Finally, a document may not be considered an appropriate test standard if the document covers products for which OSHA does not require testing and certification (Directive, App. D.IV.A). Similarly, a document that covers electrical product components would not be considered an appropriate test standard. These documents apply to types of components that have limitation(s) or condition(s) on their use, which are not appropriate for use as end-use products. These documents also specify that these types of components are for use only as part of an end-use product. NRTLs, however,

evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Testing such components alone would not indicate that the end-use products containing the components are safe for use. Accordingly, as a matter of policy, OSHA considers that documents covering such components are not appropriate test standards under the NRTL Program. OSHA notes, however, that it is not proposing to delete from NRTLs’ scope of recognition any test standards covering end-use products that contain such components.<sup>1</sup>

In addition, OSHA notes that, to conform to a test standard covering an end-use product, a NRTL must still determine that the components in the product comply with the components’ specific test standards. In making this determination, NRTLs may test the components themselves, or accept the testing of a qualified testing organization that a given component conforms to the particular test standard. OSHA reviews each NRTL’s procedures to determine which approach the NRTL will use to address components, and reviews the end-use product testing to verify the NRTL appropriately addresses that product’s components.

*Proposed Modification to the List of Appropriate NRTL Program Test Standards and the Scope of Recognition of Several NRTLs*

In a November 6, 2014, **Federal Register** notice (79 FR 65991, referred to in this notice as “Proposed

Modification,” and available at [www.regulations.gov](http://www.regulations.gov) under Docket ID OSHA–2013–0012–0011), OSHA proposed: adding several standards to the NRTL Program’s List of Appropriate Test Standards; deleting several withdrawn and deleted test standards from the NRTL Program’s list of appropriate test standards; incorporating into the NRTL Program’s list of appropriate test standards replacement test standards for some of the withdrawn and deleted test standards; and updating the scope of recognition of several NRTLs. OSHA received two comments on proposed actions (available at [www.regulations.gov](http://www.regulations.gov) under Docket IDs OSHA–2013–0012–0013 and OSHA–2013–0012–0014). OSHA fully considered these comments, and in this Notice, takes final action on the proposals.

**II. Final Decision To Add a New Test Standard to the NRTL Program’s List of Appropriate Test Standards**

In this notice, OSHA announces the final decision to add one new test standard, UL 60745–2–23, Hand-Held Motor-Operated Electric Tools—Safety—Part 2–23: Particular Requirements for Die Grinders and Small Rotary Tools, to the NRTL Program’s list of appropriate test standards. In the Proposed Modification, OSHA proposed adding sixteen test standards to the NRTL Program’s List of Appropriate Test Standards, as described in Table 1:

**TABLE 1—TEST STANDARDS OSHA PROPOSED TO ADD TO THE NRTL PROGRAM’S LIST OF APPROPRIATE TEST STANDARDS**

Test standard	Test standard title
AAMI HA60601–1–11	Medical Electrical Equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral Standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare.
AAMI 60601–2–2 .....	Medical Electrical Equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgery equipment and high frequency surgical accessories.
AAMI 60601–2–4 .....	Medical Electrical Equipment—Part 2–4: Particular requirements for basic safety and essential performance of cardiac defibrillators.
AAMI 60601–2–16 .....	Medical Electrical Equipment—Part 2–16: Particular requirements for basic safety and essential performance of hemodialysis, hemodiafiltration and hemofiltration equipment.
AAMI 60601–2–19 .....	Medical Electrical Equipment—Part 2–19: Particular requirements for the basic safety and essential performance of infant incubators.
AAMI 60601–2–20 .....	Medical Electrical Equipment—Part 2–20: Particular requirements for the basic safety and essential performance of infant transport incubators.
AAMI 60601–2–21 .....	Medical Electrical Equipment—Part 2–21: Particular requirements for the basic safety and essential performance of infant radiant warmers.
AAMI 60601–2–25 .....	Medical Electrical Equipment—Part 2–25: Particular requirements for the basic safety and essential performance of electrocardiographs.
AAMI 60601–2–27 .....	Medical Electrical Equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment.

<sup>1</sup> OSHA notes also that some types of devices covered by these documents, such as capacitors and transformers, may be end-use products themselves, and tested under other test standards applicable to

such products. For example, the following test standard covers transformers that are end-use products: UL 1562 Standard for Transformers, Distribution, Dry-Type—Over 600 Volts. OSHA is

not proposing to delete such test standards from NRTLs’ scopes of recognition.

TABLE 1—TEST STANDARDS OSHA PROPOSED TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Test standard	Test standard title
AAMI 60601-2-47 .....	Medical Electrical Equipment—Part 2-47: Particular requirements for the basic safety and essential performance of ambulatory electrocardiographic systems.
AAMI 60601-2-50 .....	Medical Electrical Equipment—Part 2-50: Particular requirements for the basic safety and essential performance of infant phototherapy equipment.
AAMI 80601-2-30 .....	Medical Electrical Equipment—Part 2-30: Particular requirements for the basic safety and essential performance of automated non-invasive sphygmomanometers.
AAMI 80601-2-58 .....	Medical Electrical Equipment—Part 2-58: Particular requirements for the basic safety and essential performance of lens removal devices and vitrectomy devices for ophthalmic surgery.
ISA 60079-25 .....	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
ISA 60079-27 .....	Explosive Atmospheres—Part 27: Fieldbus Intrinsically Safe Concept (FISCO) and Fieldbus Non-Incendive Concept (FNICO).
UL 60745-2-23 .....	Hand-Held Motor-Operated Electric Tools—Safety—Part 2-23: Particular Requirements for Die Grinders and Small Rotary Tools.

One commenter, Curtis Strauss, LLC, a NRTL, asserted that OSHA should not add 13 of these 16 test standards to the list of appropriate test standards: AAMI HA60601-1-11; AAMI 60601-2-2; AAMI 60601-2-4; AAMI 60601-2-16; AAMI 60601-2-19; AAMI 60601-2-20; AAMI 60601-2-21; AAMI 60601-2-25; AAMI 60601-2-27; AAMI 60601-2-47; AAMI 60601-2-50; AAMI 80601-2-30; and AAMI 80601-2-58.

In its final decision, OSHA decided not to adopt the 13 test standards as they do not address worker safety. These collateral and particular standards for AAMI ES 60601-1 do not

fall under the scope of, and are not appropriate test standards under, the NRTL Program because they are primarily focused on essential performance of equipment and patient safety, and not worker safety.

In the final decision, OSHA also decided not to adopt the proposal to add ISA 60079-25 to the List of Appropriate Test Standards because doing so would lead to the placement of identical standards on the list. This test standard has already been added to the List of Appropriate Test Standards by a separate final action of the Agency (see 81 FR 91204 (Dec. 16, 2016), available

on [www.regulations.gov](http://www.regulations.gov) under Docket ID OSHA-2007-0039-0024).

Finally, in the final decision, OSHA decided not to adopt the proposal to add ISA 60079-27 to the List of Appropriate Test Standards. This standard is in the process of being withdrawn by ISA, as the substance of the standard has been added to other test standards (UL 60079-11 and UL 60079-25), which are already in the NRTL Program's List of Appropriate Test.

Table 2 and 3, summarize OSHA's final decisions on adding the subject test standards to its List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA DECIDED NOT TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS AND RATIONALES FOR FINAL DECISIONS

Test standard	Test standard title	Agency decision
AAMI HA60601-1-11	Medical Electrical Equipment—Part 1-11: General requirements for basic safety and essential performance—Collateral Standard: Requirements for Medical Electrical Equipment and medical electrical systems used in the home healthcare.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-2 .....	Medical Electrical Equipment—Part 2-2: Particular requirements for the basic safety and essential performance of high frequency surgery equipment and high frequency surgical accessories.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-4 .....	Medical Electrical Equipment—Part 2-4: Particular requirements for basic safety and essential performance of cardiac defibrillators.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-16 .....	Medical Electrical Equipment—Part 2-16: Particular requirements for basic safety and essential performance of hemodialysis, hemodiafiltration and hemofiltration equipment.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-19 .....	Medical Electrical Equipment—Part 2-19: Particular requirements for the basic safety and essential performance of infant incubators.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-20 .....	Medical Electrical Equipment—Part 2-20: Particular requirements for the basic safety and essential performance of infant transport incubators.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-21 .....	Medical Electrical Equipment—Part 2-21: Particular requirements for the basic safety and essential performance of infant radiant warmers.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-25 .....	Medical Electrical Equipment—Part 2-25: Particular requirements for the basic safety and essential performance of electrocardiographs.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-27 .....	Medical Electrical Equipment—Part 2-27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment.	This standard does not fall under the scope of the NRTL Program.
AAMI 60601-2-47 .....	Medical Electrical Equipment—Part 2-47: Particular requirements for the basic safety and essential performance of ambulatory electrocardiographic systems.	This standard does not fall under the scope of the NRTL Program.

TABLE 2—TEST STANDARDS OSHA DECIDED NOT TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS AND RATIONALES FOR FINAL DECISIONS—Continued

Test standard	Test standard title	Agency decision
AAMI 60601–2–50 .....	Medical Electrical Equipment—Part 2–50: Particular requirements for the basic safety and essential performance of infant phototherapy equipment.	This standard does not fall under the scope of the NRTL Program.
AAMI 80601–2–30 .....	Medical Electrical Equipment—Part 2–30: Particular requirements for the basic safety and essential performance of automated non-invasive sphygmomanometers.	This standard does not fall under the scope of the NRTL Program.
AAMI 80601–2–58 .....	Medical Electrical Equipment—Part 2–58: Particular requirements for the basic safety and essential performance of lens removal devices and vitrectomy devices for ophthalmic surgery.	This standard does not fall under the scope of the NRTL Program.
ISA 60079–25 .....	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems .....	This standard was added as an appropriate test standard in a separate final action of the Agency.
ISA 60079–27 .....	Explosive Atmospheres—Part 27: Fieldbus Intrinsically Safe Concept (FISCO) and Fieldbus Non-Incendive Concept (FNICO).	This standard is currently being withdrawn by ISA.

TABLE 3—TEST STANDARD OSHA DECIDED TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 60745–2–23 .....	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–23: Particular Requirements for Die Grinders and Small Rotary Tools

### III. Final Decision To Delete or Replace Several Test Standards From the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA announces the final decision to delete seven withdrawn and deleted test standards from the NRTL Program's List of Appropriate Test Standards. OSHA also incorporates into the NRTL Program's List of Appropriate Test Standards replacement test standards for some of the withdrawn and deleted test standards. (See Table 4).

In the proposed modification, OSHA proposed deleting eight standards from the NRTL Program's List of Appropriate Test Standards, the seven standards listed in Table 4, and one additional standard, FM 3620—Purged and Pressurized Electrical Equipment for Hazardous Locations. OSHA proposed deleting FM 3620 because the references are out-of date standards, and proposed replacing FM 3620 with NFPA 496—Purged and Pressurized Enclosures for

Electrical Equipment. Given this proposal, OSHA also proposed deleting FM 3620 from the scopes of recognition of NRTLs FM Approvals, LLC and Canadian Standards Association, and replacing that standard in those NRTLs' scope of recognition with NFPA 496.

In a comment to the Proposed Modification (available on [www.regulations.gov](http://www.regulations.gov) under Docket ID OSHA–2013–0012–0014), FM Approvals asked that OSHA not change its existing scope of recognition, as proposed, because FM Approvals updated FM 3620 in December 2014 (after OSHA issued the proposed modification), so that the test standard no longer contains references to out-of-date standards. FM Approvals included the updated test standard as part of the comment in attachment to its comment.

OSHA has fully reviewed the test standard submitted by FM Approvals and confirmed FM Approvals' assertions. Therefore, in this final decision, OSHA will not delete FM 3620

from the List of Appropriate Test Standards, or delete FM 3620 from the scope of recognition of FM Approvals, LLC or Canadian Standards Association, or replace that standard in those NRTLs' scopes of recognition with NFPA 496.

Table 4 lists the seven test standards OSHA will delete from the NRTL Program's list of appropriate test standards, as well as abbreviated rationales for OSHA's final action. For a full discussion of the rationales, see Section I of this notice. Table 4 also lists corresponding replacement test standards that OSHA will incorporate into the NRTL Program's list of appropriate test standards (when applicable).

OSHA notes also that Table 4 lists the subject test standards and corresponding actions taken with regard to each of these test standards without indicating how the actions will affect individual NRTLs. Section IV of this notice discusses how these actions will affect individual NRTLs.

TABLE 4—LIST OF TEST STANDARDS OSHA IS DELETING FROM OR INCORPORATING INTO NRTLs SCOPES OF RECOGNITION

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements is currently listed as an appropriate NRTL standard.
UL 61010A–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These three standards have been withdrawn and consolidated into a single standard.	UL 61010–1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements is currently listed as an appropriate NRTL standard.

TABLE 4—LIST OF TEST STANDARDS OSHA IS DELETING FROM OR INCORPORATING INTO NRTLs SCOPES OF RECOGNITION—Continued

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 61010B–1—Electrical Measuring and Test Equipment; Part 1: General Requirements. UL 61010C–1—Process Control Equipment. UL 1004—Electrical Motors (This standard has already been removed).	Standard has been withdrawn .....	UL 1004–1—Rotating Electrical machines—General Requirements is currently listed as an appropriate NRTL standard. None.
UL 681—Installation and Classification of Burglar and Holdup Alarm System.	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

#### IV. Final Decision To Modify Affected NRTLs' Scope of Recognition

In this notice, OSHA announces the final decision to update the scope of recognition of several NRTLs. The tables in this section (Table 5 thru Table 18) list, for each affected NRTL, the test standard(s) that OSHA will delete from the scope of recognition and, when applicable, the test standard(s) that OSHA will incorporate into the scope of recognition to replace withdrawn (and deleted) test standards.

In this final decision, OSHA adopts the proposed modifications to affected NRTLs' Scope of Recognition, and Table 5 thru Table 18 are identical to Table 3

thru Table 16 of the Proposed Modification, with certain exceptions:

- OSHA proposed deleting FM 3620 from the scopes of recognition of NRTLs FM Approvals, LLC, and Canadian Standards Association, and replacing that standard in those NRTLs' scopes of recognition with NFPA 496. As explained in Section III of this notice, in this final decision, OSHA will not delete FM 3620 from the List of Appropriate Test Standards, or delete FM 3620 from the scopes of recognition of FM Approvals, LLC or Canadian Standards Association, or replace that standard in those NRTLs' scopes of recognition with NFPA 496. Thus, Table

5 thru Table 18 do not include entries discussing FM 3620 or NFPA 496.

- OSHA proposed deleting UL 1004—Electrical Motors from the scopes of recognition of six NRTLs (Canadian Standards Association; Intertek Testing Services NA, Inc.; TUV Rhineland of North America, Inc.; TUV SUD America, Inc.; TUV SUD Product Services; Underwriters Laboratories, Inc.). OSHA also proposed UL 1004–1—Rotating Electrical Machines as a replacement test standard for UL 1004, but noted that “NRTLs wishing to add UL 1004–1 must submit an application to OSHA.” Table 5 thru Table 18 reflect whether the subject NRTLs have received recognition for UL 1004–1.

TABLE 5—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF CANADIAN STANDARDS ASSOCIATION (CSA)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	UL 1004–1—Rotating Electrical Machines, see 80 FR 76044, Dec. 7, 2015.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010–1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B–1—Electrical Measuring and Test Equipment; Part 1: General Requirements. UL 61010C–1—Process Control Equipment.		
UL 681—Installation and Classification of Burglar and Holdup Alarm System.	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 6—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF CURTIS-STRAUS LLC (CSL)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950—1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A—1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010—1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B—1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		

TABLE 7—TEST STANDARDS OSHA PROPOSES TO DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION FM APPROVALS LLC (FM)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950—1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A—1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010—1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B—1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 8—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC. (ITSNA)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	UL 1004—1—Rotating Electrical Machines, see 79 FR 62676, Oct. 20, 2014.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950—1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A—1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010—1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B—1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		
UL 61010C—1—Process Control Equipment.	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 681—Installation and Classification of Burglar and Holdup Alarm System.		
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 9—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF MET LABORATORIES, INC. (MET)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950—1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A—1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010—1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B—1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		
UL 61010C—1—Process Control Equipment .....		

TABLE 10—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF NEMKO NORTH AMERICA, INC. (NNA)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Standard has been withdrawn and consolidated with others into a single standard.	UL 61010–1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.

TABLE 11—TEST STANDARD OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF NSF INTERNATIONAL (NSF)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 61010A–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Standard has been withdrawn and consolidated with others into a single standard.	UL 61010–1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.

TABLE 12—TEST STANDARD OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF QPS EVALUATION SERVICES (QPS)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.

TABLE 13—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION SGS NORTH AMERICA, INC. (SGS)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010–1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B–1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		

TABLE 14—TEST STANDARD OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF SOUTHWEST RESEARCH INSTITUTE (SWRI)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.

TABLE 15—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV RHINELAND OF NORTH AMERICA, INC. (TUV)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	UL 1004–1—Rotating Electrical Machines, see 82 FR 7866, Jan. 20, 2017.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950–1—Information Technology Equipment—Safety—Part 1: General Requirements.

TABLE 15—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV RHINELAND OF NORTH AMERICA, INC. (TUV)—Continued

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 61010A-1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010-1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B-1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		
UL 61010C-1—Process Control Equipment .....		
UL 681—Installation and Classification of Burglar and Holdup Alarm System.		None.
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 16—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV SUD AMERICA, INC. (TUVAM)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	Application pending to add UL 1004-1—Rotating Electrical Machines to TUVAM's scope of recognition.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950-1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A-1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010-1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B-1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		

TABLE 17—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF TUV SUD PRODUCT SERVICES (TUVPSG)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	Application pending to add UL 1004-1—Rotating Electrical Machines to TUVPSG's scope of recognition.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950-1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A-1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010-1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B-1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		

TABLE 18—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC. (UL)

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 1004—Electrical Motors .....	Standard has been withdrawn .....	UL 1004-1—Rotating Electrical Machines, see 79 FR 63949, Oct. 27, 2014.
UL 60950—Information Technology Equipment	Standard has been withdrawn and directly replaced by a new standard.	UL 60950-1—Information Technology Equipment—Safety—Part 1: General Requirements.
UL 61010A-1—Electrical Equipment for Laboratory Use; Part 1: General Requirements.	These standards have been withdrawn and consolidated into a single standard.	UL 61010-1—Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
UL 61010B-1—Electrical Measuring and Test Equipment; Part 1: General Requirements.		



TABLE 18—TEST STANDARDS OSHA WILL DELETE FROM OR INCORPORATE INTO THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORIES INC. (UL)—Continued

Deleted test standard	Reason for deletion	Replacement test standard(s) (if applicable)
UL 681—Installation and Classification of Burglar and Holdup Alarm System.	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 827—Central-Station Alarm Services .....	Standard is an installation standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

OSHA will place any modifications on informational web pages to each NRTL's scope of recognition. These web pages detail the scope of recognition for each NRTL, including the test standards the NRTL may use to test and certify products under OSHA's NRTL Program. OSHA also will add to the "Current List of Appropriate Test Standards under the NRTL Program" web page, those test standards added to the NRTL list of appropriate test standards. The agency will add, to the "Current List of Removed Test Standards" web page those test standards that OSHA no longer recognizes or permits under the NRTL Program. Access to these web pages is available at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

#### V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 3, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019–07039 Filed 4–9–19; 8:45 am]

BILLING CODE 4510–26–P

#### DEPARTMENT OF LABOR

#### Occupational Safety and Health Administration

[Docket No. OSHA–2013–0012]

#### Proposed Modification to the List of Appropriate NRTL Program Test Standards and the Scopes of Recognition of Several NRTLs

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA proposes to: (1) Add new test standards to the Nationally Recognized Testing Laboratories (NRTL) Program's list of appropriate test standards; (2) delete or replace several test standards from the NRTL Program's list of appropriate test standards; and (3) update the scope of recognition of several NRTLs.

**DATES:** Submit comments, information, and documents in response to this notice, or request for an extension of time to make a submission, on or before May 10, 2019.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0012, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2013–0012). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about

themselves or others) such as Social Security Numbers, birth dates, and medical data.

*Docket:* To read or download comments or other material in the docket, go to <https://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

*Extension of comment period:* Submit requests for an extension of the comment period on or before April 25, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693–2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA's web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpc/nrtl/index.html>).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The NRTL Program recognizes organizations that provide product-safety testing and certification services to manufacturers. These organizations

perform testing and certification for purposes of the program, to U.S. consensus-based product-safety test standards. The products covered by the NRTL Program consist of those items for which OSHA safety standards require "certification" by a NRTL. The requirements affect electrical products and 38 other types of products. OSHA does not develop or issue these test standards, but generally relies on standards development organizations (SDO), which develop and maintain the standards using a method that provides input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved.

#### *Addition of New Test Standards to the NRTL List of Appropriate Test Standards*

Periodically, OSHA will add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain SDO; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties that a new test standard may be appropriate to add to the list of appropriate standards. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, addresses a type of product that no standard previously covered, or is otherwise new to the NRTL Program.

#### *SDO Deletion and Replacement of Test Standards*

The NRTL Program regulations require that appropriate test standards be maintained and current (29 CFR 1910.7(c)). A test standard withdrawn by a standards development organization is no longer considered an appropriate test standard (Directive,

App. C.XIV.B). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards. However, SDOs frequently will designate a replacement standard for withdrawn standards. OSHA will recognize a NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard.

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in a NRTL's scope are comparable (*i.e.*, are completely or substantially identical) to the requirements in the replacement test standard. If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), the replacement test standard is comparable to the existing test standard(s), then OSHA can add the replacement test standard to affected NRTLs' scopes of recognition. If OSHA's analysis shows the replacement test standard requires an additional or different technical capability, or the replacement test standard is not comparable to any existing test standards, each affected NRTL seeking to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability.

#### *Other Reasons for Removal of Test Standards From the NRTL List of Appropriate Test Standards*

OSHA may choose to remove a test standard from the NRTL list of appropriate test standards based on an internal review in which NRTL Program staff review the NRTL list of appropriate test standards to determine if the test standards conform to the definition of an appropriate test standard defined in NRTL Program regulations and policy. There are several reasons for removing a test standard based on this review. First, a document that provides the methodology for a single test is a test method rather than an appropriate test standard (29 CFR 1910.7(c)). As stated above, a test standard must specify the safety requirements for a specific type of product(s). A test method, however, is a "specified technical procedure for performing a test" (Directive, App. B). As such, a test method is not an appropriate test standard. While a NRTL may use a test method to determine if certain safety requirements are met, a

test method is not itself a safety requirement for a specific product category.

Second, a document that focuses primarily on usage, installation, or maintenance requirements would also not be considered an appropriate test standard (Directive, App. D.IV.B). In some cases, however, a document may also provide safety test specifications in addition to usage, installation, and maintenance requirements. In such cases, the document would be retained as an appropriate test standard based on the safety test specifications.

Finally, a document may not be considered an appropriate test standard if the document covers products for which OSHA does not require testing and certification (Directive, App. D.IV.A). Similarly, a document that covers electrical product components would not be considered an appropriate test standard. These documents apply to types of components that have limitation(s) or condition(s) on their use, which are not appropriate for use as end-use products. These documents also specify that these types of components are for use only as part of an end-use product. NRTLs, however, evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Testing such components alone would not indicate that the end-use products containing the components are safe for use. Accordingly, as a matter of policy, OSHA considers that documents covering such components are not appropriate test standards under the NRTL Program. OSHA notes, however, that it is not proposing to delete from NRTLs' scopes of recognition any test standards covering end-use products that contain such components.

In addition, OSHA notes that, to conform to a test standard covering an end-use product, a NRTL must still determine that the components in the product comply with the components' specific test standards. In making this determination, NRTLs may test the components themselves, or accept the testing of a qualified testing organization that a given component conforms to the particular test standard. OSHA reviews each NRTL's procedures to determine which approach the NRTL will use to address components, and reviews the end-use product testing to verify the NRTL appropriately addresses that product's components.

## II. Proposal To Remove Test Standards to the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA proposes to delete several withdrawn and deleted test standards from the NRTL Program's list of appropriate test standards. OSHA proposes to incorporate into the NRTL Program's list of appropriate test standards replacement test standards for

some of the withdrawn and deleted test standards.

Table 1 lists the test standards that OSHA proposes to delete from the NRTL Program's List of Appropriate Test Standards, as well as an abbreviated rationale for OSHA's proposed action. Additionally, Table 1 lists corresponding replacement test standards that OSHA proposes to incorporate into the NRTL Program's List of Appropriate Test Standards

(when applicable). OSHA seeks comment on this preliminary determination.

OSHA notes that Table 1 lists the subject test standards and the proposed action with regard to each of these test standards without indicating how the proposed action will affect individual NRTLs. Section IV of this notice discusses how the proposed action will affect individual NRTLs.

TABLE 1—TEST STANDARDS OSHA IS PROPOSING TO REMOVE FROM NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Proposed deleted test standard	Test standard title	Reason for deletion	Proposed replacement standard(s)
ANSI C37.44 .....	Distribution Oil Cutouts and Fuse Links .....	Withdrawn .....	None.
IEEE C37.09 .....	Standard Test Procedure for High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis.	Withdrawn .....	None.
IEEE C37.29 .....	Low-Voltage AC Power Circuit Protectors Used in Enclosures.	Withdrawn .....	None.
IEEE C37.45 .....	Distribution Enclosed Single-Pole Air Switches.	Withdrawn .....	None.
NEMA C37.52 .....	Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures.	Withdrawn .....	None.
IEEE C37.53 .....	High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures.	Withdrawn .....	None.
ISA 82.02.01 .....	Electric and Electronic Test, Measuring, Controlling and Related Equipment: General Requirement.	Withdrawn .....	None.
UL 1093 .....	Halogenated Agent Fire Extinguishers .....	Withdrawn .....	None.
UL 1244 .....	Electrical and Electronic Measuring and Testing Equipment.	Withdrawn .....	None.
UL 1448 .....	Electric Hedge Trimmers .....	Withdrawn and replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
ISA 60079–2 .....	Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.	Withdrawn and replaced .....	UL 60079–2 Explosive Atmospheres—Part 2: Protection by Pressurized Enclosures “p”.
ISA 60079–5 .....	Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.	Withdrawn and replaced .....	UL 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
ISA 60079–18 .....	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.	Withdrawn and replaced .....	UL 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
ISA 60079–26 .....	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.	Withdrawn and replaced .....	UL 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 745–1 .....	Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2 .....	Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–3 .....	Particular Requirements for Grinders, Polishers and Disk-Type Sanders.	Withdrawn .....	None.
UL 745–2–17 .....	Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–36 .....	Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 .....	Particular Requirements for Plate Jointers .....	Withdrawn .....	None.
UL 61010A–1 .....	Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A–2–010 ..	Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010–2–010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–020 ..	Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010–2–020 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 61010A–2–041 ..	Electrical Equipment for Laboratory Use: Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010A–2–051 ..	Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010–2–051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.

TABLE 1—TEST STANDARDS OSHA IS PROPOSING TO REMOVE FROM NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Proposed deleted test standard	Test standard title	Reason for deletion	Proposed replacement standard(s)
UL 61010A–2–061 ..	Electrical Equipment for Laboratory Use: Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010–2–061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B–1 .....	Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–2–031 ..	Electrical Equipment for Measurement, Control and Laboratory Use: Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010C–1 .....	Process Control Equipment .....	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

### III. Proposed Modifications to Affected NRTLs' Scopes of Recognition

In this notice, OSHA additionally proposes to update the scopes of recognition of several NRTLs with a replacement for the test standard OSHA proposes to remove. The tables in this section (Table 2 thru Table 9) list, for each affected NRTL, the test standard(s) that OSHA proposes to remove from the scope of recognition of the NRTL along

with the proposed replacement test standard (if any).

OSHA seeks comment on whether its proposed deletion and replacement are appropriate, and whether individual tables omit any appropriate replacement test standard that is comparable to a withdrawn test standard. If OSHA determines that it omitted any appropriate replacement test standard that is comparable to a withdrawn test standard, it will, in its final determination, incorporate that

replacement test standard into the scope of recognition of each affected NRTL.

Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request, by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

TABLE 2—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization .....	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.
IEEE C37.09 Standard Test Procedure for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis.	Withdrawn .....	None.
IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures.	Withdrawn .....	None.
IEEE C37.45 Distribution Enclosed Single-Pole Air Switches.	Withdrawn .....	None.
NEMA C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures.	Withdrawn .....	None.
ISA 82.02.01 Electric and Electronic Test, Measuring, Controlling and Related Equipment: General Requirement.	Withdrawn .....	None.
UL 1244 .....	Withdrawn .....	None.
UL 1448 .....	Withdrawn and Replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
ISA 60079–2 Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.	Withdrawn and replaced .....	UL 60079–2 Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.
ISA 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.	Withdrawn and replaced .....	UL 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
ISA 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.	Withdrawn and replaced .....	UL 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
ISA 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.	Withdrawn and replaced .....	UL 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.

TABLE 2—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF THE CANADIAN STANDARDS ASSOCIATION—Continued

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010–2–010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010–2–020 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010–2–051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010–2–061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–2–031 Electrical Equipment for Measurement, Control and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010C–1 Process Control Equipment .....	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 3—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF FM APPROVALS LLC

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 1093 .....	Withdrawn .....	None.
ISA 82.02.01 Electric and Electronic Test, Measuring, Controlling and Related Equipment: General Requirement.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 4—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES, NA

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization .....	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Centrifuges.
IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures.	Withdrawn .....	None.
ISA 82.02.01 Electric and Electronic Test, Measuring, Controlling and Related Equipment: General Requirement.	Withdrawn .....	None.
UL 1093 Halogenated Agent Fire Extinguishers .....	Withdrawn .....	None.
UL 1244 Electrical and Electronic Measuring and Testing Equipment.	Withdrawn .....	None.
UL 1448 Electric Hedge Trimmers .....	Withdrawn and Replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
ISA 60079–2 Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.	Withdrawn and replaced .....	UL 60079–2 Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.

TABLE 4—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES, NA—Continued

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
ISA 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.	Withdrawn and replaced .....	UL 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
ISA 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.	Withdrawn and replaced .....	UL 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
ISA 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.	Withdrawn and replaced .....	UL 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010–2–010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010–2–020 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010–2–051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010–2–061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–2–031 Electrical Equipment for Measurement, Control and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010C–1 Process Control Equipment .....	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 5—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF MET LABORATORIES, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 1448 Electric Edge Trimmers .....	Withdrawn and Replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
UL 1244 Electrical and Electronic Measuring and Testing Equipment.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010C–1 Process Control Equipment .....	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 6—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TUV RHEINLAND OF NORTH AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 1448 .....	Withdrawn and replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010C–1 Process Control Equipment .....	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 7—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TUV SUD AMERICA, INC.

Proposed test standard to be remove	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization .....	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 1448 .....	Withdrawn and replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010–2–010.
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010–2–010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010–2–051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010–2–061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B–2–031 Electrical Equipment for Measurement, Control and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).

TABLE 8—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TUVPSG, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010–2–010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010–2–020 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges.
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement).
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010–2–051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010–2–061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B–1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010–1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

TABLE 9—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORY, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A–2–020—Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Laboratory Centrifuges.	Standard withdrawn by Standards Organization .....	UL 61010–2–020—Standard for Safety Requirements for Electrical Equipment for Laboratory Use; Part 2–020: Particular Requirements for Laboratory Centrifuges.
ANSI C37.44 Distribution Oil Cutouts and Fuse Links	Withdrawn .....	None.
IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures.	Withdrawn .....	None.
IEEE C37.45 Distribution Enclosed Single-Pole Air Switches.	Withdrawn .....	None.
IEEE C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures.	Withdrawn .....	None.
UL 1093 Halogenated Agent Fire Extinguishers .....	Withdrawn .....	None.
UL 1244 Electrical and Electronic Measuring and Testing Equipment.	Withdrawn .....	None.
UL 1448 Electric Hedge Trimmers .....	Withdrawn and replaced .....	UL 60745–2–15 Particular Requirements for Hedge Trimmers.
ISA 60079–2 Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures “p”.	Withdrawn and replaced .....	UL 60079–2 Explosive Atmospheres—Part 2: Protection by Pressurized Enclosures “p”.
ISA 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.	Withdrawn and replaced .....	UL 60079–5 Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
ISA 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.	Withdrawn and replaced .....	UL 60079–18 Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
ISA 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.	Withdrawn and replaced .....	UL 60079–26 Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 745–1 Portable Electric Tools .....	Withdrawn .....	None.
UL 745–2–1 Particular Requirements of Drills .....	Withdrawn .....	None.
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives.	Withdrawn .....	None.
UL 745–2–17 Particular Requirements for Routers and Trimmers.	Withdrawn .....	None.
UL 745–2–36 Particular Requirements for Hand Motor Tools.	Withdrawn .....	None.
UL 745–2–37 Particular Requirements for Plate Jointers.	Withdrawn .....	None.



TABLE 9—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF UNDERWRITERS LABORATORY, INC.—Continued

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A-1 Electrical Equipment for Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010-1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010A-2-010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for the Heating of Materials.	Withdrawn and replaced .....	UL 61010-2-010 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2-010: Particular Requirements for Laboratory Equipment for the Heating of Materials.
UL 61010A-2-020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges.	Withdrawn and replaced .....	UL 61010-2-020 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2-020: Particular Requirements for Laboratory Centrifuges.
UL 61010A-2-041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Purposes.	Withdrawn and replaced .....	UL 61010-1 (no direct replacement).
UL 61010A-2-051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring.	Withdrawn and replaced .....	UL 61010-2-051 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2-051: Particular Requirements for Laboratory Equipment for Mixing and Stirring.
UL 61010A-2-061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.	Withdrawn and replaced .....	UL 61010-2-061 Electrical Equipment for Measurement, Control and Laboratory Use—Part 2-061: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization.
UL 61010B-1 Electrical Measuring and Test Equipment; Part 1: General Requirements.	Withdrawn and replaced .....	UL 61010-1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.
UL 61010B-2-031 Electrical Equipment for Measurement, Control and Laboratory Use; Part 2: Particular Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.	Withdrawn and replaced .....	UL 61010-1 (no direct replacement).
UL 61010C-1 Process Control Equipment .....	Withdrawn and replaced .....	UL 61010-1 Electrical Equipment for Measurement, Control and Laboratory Use; Part 1: General Requirements.

To obtain or review copies of comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials will also be available online at <http://www.regulations.gov> under Docket No. OSHA-2013-0012.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding the removal of these test standards from the NRTL Program's List of Appropriate Test Standards and to update the scope of recognition of several NRTLs. The Assistant Secretary will make the final decision. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

#### IV. Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice

pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on April 3, 2019.

**Loren Sweatt,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2019-07040 Filed 4-9-19; 8:45 am]

**BILLING CODE 4510-26-P**

#### LIBRARY OF CONGRESS

##### Copyright Royalty Board

**[Docket No. CONSOLIDATED 16-CRB-0009-CD (2014-17)]**

##### Distribution of Cable Royalty Funds

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice requesting comments.

**SUMMARY:** The Copyright Royalty Judges solicit comments on a motion for partial distribution of 2017 cable royalty funds.

**DATES:** Comments are due on or before May 10, 2019.

**ADDRESSES:** Interested claimants must submit timely comments, identified by CONSOLIDATED docket number 16-

CRB-0009-CD (2014-17), by only one of the following means.

**CRB's online electronic filing application:** Submit comments online in eCRB at <https://app.crb.gov/>.

**U.S. mail or Overnight service (only USPS Express Mail is acceptable):**

Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or  
**Commercial courier:** Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

**Hand delivery:** Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

**Instructions:** Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at <https://app.crb.gov/> including any personal information provided.

**Docket:** For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright

Royalty Board's online electronic filing and case management system, at <https://app.crb.gov/> and search for CONSOLIDATED docket number 16–CRB–0009–CD (2014–17).

**FOR FURTHER INFORMATION CONTACT:**

Anita Blaine, Program Specialist, by telephone at (202) 707–7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license detailed in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying transmission and who file a timely claim for royalties. Allocation of the royalties collected occurs in one of two ways.

In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. 17 U.S.C. 111(d)(4)(A). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. 17 U.S.C. 111(d)(4)(C), 801(b)(3)(C).

On March 15, 2019, representatives of Allocation Phase claimants<sup>1</sup> filed with the Judges a motion pursuant to section 801(b)(3)(C) of the Copyright Act requesting a partial distribution amounting to 40% of the 2017 cable royalty funds on deposit. 17 U.S.C. 801(b)(3)(C). That statutory section requires that, before ruling on the motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a

reasonable objection to the requested distribution.

Accordingly, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 40% of the 2017 cable royalty funds to the requesting claimant representatives. Parties objecting to the partial distribution must advise the Judges of the existence and extent of all objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution that come to their attention after the close of the comment period.

Members of the public may read the motion by accessing the Copyright Royalty Board's electronic filing and case management system at <https://app.crb.gov/> and searching for CONSOLIDATED docket number 16–CRB–0009–CD (2014–17).

Dated: April 4, 2019.

**Jesse M. Feder,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2019–07033 Filed 4–9–19; 8:45 am]

**BILLING CODE 1410–72–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting; National Science Board

The National Science Board's Task Force on the Skilled Technical Workforce, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

**TIME AND DATE:** Tuesday, April 16, 2019, at 3:00–4:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to [nationalsciencebrd@nsf.gov](mailto:nationalsciencebrd@nsf.gov) at least 24 hours prior to the teleconference.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Discussion of the Task Force on the Skilled Technical Workforce final report draft.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Mateo Munoz, [mmunoz@nsf.gov](mailto:mmunoz@nsf.gov), 703–292–7000. Meeting information and updates may be found at [http://](http://www.nsf.gov/nsb/notices.jsp#sunshine)

[www.nsf.gov/nsb/notices.jsp#sunshine](http://www.nsf.gov/nsb/notices.jsp#sunshine). Please refer to the National Science Board website at [www.nsf.gov/nsb](http://www.nsf.gov/nsb) for general information.

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2019–07205 Filed 4–8–19; 4:15 pm]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that a teleconference for the transaction of National Science Board business was held during the partial governmentwide shut down:

**TIME AND DATE:** January 15, 2019, from 4:00–5:00 p.m. EST.

**PLACE:** The meeting took place by teleconference. Because of the restrictions associated with the partial governmentwide shutdown, no public listening line could be opened. A transcript of the teleconference will be made available upon request.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Director's opening remarks; discuss issues and topics for an agenda of the NSB meeting scheduled for February 12, 2019.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. Please refer to the National Science Board website at [www.nsf.gov/nsb](http://www.nsf.gov/nsb).

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2019–07204 Filed 4–8–19; 4:15 pm]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.  
**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection

<sup>1</sup> The representatives are Program Suppliers; Joint Sports Claimants; Public Television Claimants; National Association of Broadcasters; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; Canadian Claimants Group; Devotional Claimants; and National Public Radio, which represent traditionally recognized claimant categories. The Judges have not and do not by this notice determine the universe of claimant categories for 2017 cable retransmission royalties.

requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: <http://www.reginfo.gov/public/do/PRAMain>.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

**FOR FURTHER INFORMATION CONTACT:** Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703-292-7556.

**SUPPLEMENTARY INFORMATION:** NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

*Title of Collection:* Education and Human Resources Program Monitoring Clearance.

*OMB Number:* 3145-0226.

*Type of Request:* Intent to seek approval to extend, with revisions, an information collection.

*Abstract:* The National Science Foundation (NSF) requests re-clearance of program accountability data collections that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (e.g., pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

The scope of this information collection request will primarily cover descriptive information gathered from education and training (E&T) projects that are funded by NSF. NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors

(COVs), the NSF's Office of the Inspector General, and as a basis for either internal or third-party evaluations of individual programs.

The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post- NSF-funding-level impacts).

*Use of the Information:* This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2014–2018 Strategic Plan may be found at: <http://www.nsf.gov/pubs/2014/nsf14043/nsf14043.pdf>.

Since this collection will primarily be used for accountability and evaluation purposes, including responding to queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's E&T portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

*Respondents:* Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

*Number of Respondents:* 2,511.

*Burden on the Public:* NSF estimates that a total reporting and recordkeeping burden of 32,698 hours will result from activities to monitor EHR STEM education programs. The calculation is shown in table 1.

TABLE 1—ANTICIPATED PROGRAMS THAT WILL COLLECT DATA ON PROJECT PROGRESS AND OUTCOMES ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER COLLECTION PER YEAR.

Collection title	Number of respondents	Number of responses	Annual hour burden
Centers of Research Excellence in Science and Technology (CREST) and Historically Black Colleges and Universities Research Infrastructure for Science and Engineering (HBCU-RISE) Monitoring System .....	42	42	1,648
Integrative Graduate Education and Research Traineeship Program (IGERT) Monitoring System .....	513	521	3,242
Louis Stokes Alliances for Minority Participation (LSAMP) Monitoring System .....	625	625	16,250
Louis Stokes Alliances for Minority Participation Bridge to the Doctorate (LSAMP-BD) Monitoring System .....	56	56	1,008
Robert Noyce Teacher Scholarship Program (Noyce) Monitoring System .....	550	550	6,050
Scholarships in Science, Technology, Engineering, and Mathematics (S-STEM) Monitoring System .....	700	1,750	4,900
Science, Technology, Engineering, and Mathematics Talent Expansion Program (STEP) Monitoring System .....	25	25	500
Total .....	2,511	3,219	32,698

Dated: April 5, 2019.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2019-07074 Filed 4-9-19; 8:45 am]

BILLING CODE 7555-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-0925; NRC-2019-0093]

### Cimarron Environmental Response Trust Cimarron Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to provide comments, request a hearing and to petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received a license amendment application from the licensee, Cimarron Environmental Response Trust (CERT) for the Cimarron Facility, located in Logan County, Oklahoma. The license authorizes possession of Byproduct, Source, and Special Nuclear Material (SNM-928). CERT requested approval of its proposed Facility Decommissioning Plan (DP), Rev. 1 for the Cimarron Facility in Guthrie, Oklahoma and incorporation of the DP into its license by license amendment. The requested license amendment would also: Revise to the possession limit; change the description of the licensed site; eliminate License Conditions that are no longer applicable; and incorporate a revised Radiation Protection Program into the license. The requested license amendment is necessary for CERT to complete the remaining decommissioning activities needed for

NRC to release the Cimarron site for unrestricted use. The requested license amendment is also necessary to ultimately terminate Special Materials License SNM-928; however, license termination is a separate action that requires a separate application from CERT and a separate NRC finding that the site is suitable for release.

**DATES:** Submit comments by May 10, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A request for a hearing or petition for leave to intervene must be filed by June 10, 2019.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0093. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.
- For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Kalman, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6664, email: [Kenneth.Kalman@nrc.gov](mailto:Kenneth.Kalman@nrc.gov).

## SUPPLEMENTARY INFORMATION:

### I. Obtaining Information and Submitting Comments

#### A. Obtaining Information

Please refer to Docket ID NRC-2019-0093 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0093.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The NRC's February 28, 2019, letter accepting the proposed Cimarron Facility Decommissioning Plan Rev. 1 (ADAMS Package Accession No. ML18323A197) for detailed technical review is available in an ADAMS package under Accession No. ML19056A513.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments

Please include Docket ID NRC–2019–0093 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC received, by letter dated November 2, 2018, an application (ADAMS Package Accession No. ML18323A197) to amend Materials License No. SNM–928 (ADAMS Accession No. ML110270373), which authorizes possession of Byproduct, Source, and Special Nuclear Material. The objective of the proposed action is to decontaminate and decommission the Cimarron site to permit release for unrestricted use. In accordance with 10 CFR 70.38(g) CERT, submitted a proposed DP. CERT requested a license amendment to incorporate the proposed DP into the license. As part of this license amendment, CERT has also requested several other revisions to the Radioactive Materials License SNM–928. CERT requested revision of the possession limit. License Condition 8(D) authorizes the possession of up to 6,000 kilograms of thorium. CERT states that the last thorium contaminated material was shipped for disposal in 2004. Hence, there is no longer a need for a thorium possession limit. CERT also requested other minor revisions to the possession limit License Condition. CERT requested a revision to the description of the licensed area of the site. The site has been in decommissioning status since 1976 and portions of the site have been released from license by the NRC. This proposed revision would amend the license to re-define the boundaries of the site for decommissioning purposes to accurately reflect the portions of the site

where licensed material, which is in groundwater, is currently located and where licensed material would be stored or packaged for disposal. CERT requested deletion of several tie-downs in License Conditions 10 and 27 that are outdated and no longer relevant or required and revisions to License Condition 27 to reflect the groundwater remediation plan in the proposed DP. As noted, the site has been in decommissioning status since 1976 and various decommissioning activities specified in the license are complete or are no longer required due to changes in the decommissioning schedule and the description of the licensed site. CERT requested a revision to License Condition 23 to reflect the current status of the disposal cell area, which was maintained for the 5-year period required by the NRC with no evidence of subsidence or erosion. Finally, CERT requested that the license be amended to incorporate a revision to its Radiation Protection Program. On February 14, 2011, License SNM–928 was transferred from the previous licensee to CERT (ADAMS Package Accession No. ML110270370). Under License Condition 27(e), CERT can make revisions to its Radiation Protection Plan (RPP) without NRC approval, provided that certain conditions are met. Since the license was transferred to CERT, the RPP has been revised to reflect changes in the license and the licensee's organization. The purpose of this revision is to incorporate the revised RPP, which was submitted as an appendix to the proposed DP.

Since the Cimarron site has been in decommissioning status, materials and equipment, buildings and structures, and surface and subsurface soils have been decommissioned and much of the original site has been released from license. Previous licensees of the site relied on monitored natural attenuation to reduce uranium concentrations in the groundwater to levels that would meet the NRC's criteria for unrestricted use. However, in some portions of the site, uranium in the groundwater exceeds the NRC's criteria for unrestricted use. Should the NRC accept CERT'S request to incorporate the proposed DP into the license, pursuant to License Condition 27(b), CERT will begin active groundwater remediation with the goal of meeting the 180 pCi/L per liter total uranium criteria for unrestricted use to enable NRC to terminate License SNM–928.

Upon completion of an acceptance review, the NRC found the application acceptable for a detailed technical review (ADAMS Package Accession No.

ML19056A513). Prior to issuance of the requested license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report. The NRC will also perform an environmental assessment in accordance with the requirements of the National Environmental Policy Act and the NRC's regulations.

## III. Notice and Solicitation of Comments

In accordance with section 20.1405 of title 10 of the *Code of Federal Regulations* (10 CFR), the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided by May 10, 2019.

## IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and

telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition

should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of

the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-

free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would

constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, on April 4, 2019.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2019-07028 Filed 4-9-19; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 5, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 90 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2019-116, CP2019-125.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019-07104 Filed 4-9-19; 8:45 am]

**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 5, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 519 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2019-117, CP2019-126.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019-07096 Filed 4-9-19; 8:45 am]

**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* April 10, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 5, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 520 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2019-118, CP2019-127.

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2019-07097 Filed 4-9-19; 8:45 am]

**BILLING CODE 7710-12-P**



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85515; File No. SR-CboeEDGX-2019-014]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rules To Clarify the Handling of Orders That Contain Both a Post Only Instruction and Certain Other Order Handling Instructions Maintained To Facilitate Compliance With Rule 610(d) of Regulation NMS

April 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2019, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (“EDGX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend EDGX rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS. The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend EDGX rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS (the “Locked and Crossed Markets Rule”). An order entered with a Post Only instruction does not remove liquidity, except when the order is an order to buy or sell a security priced below \$1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order—*i.e.*, if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.<sup>5</sup> Today, the Exchange’s rules state that this handling applies to Post Only orders entered with Price Adjust<sup>6</sup> or Display-Price Sliding<sup>7</sup> instruction,

<sup>5</sup> See EDGX Rule 11.6(n)(4). To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

<sup>6</sup> “Price Adjust” is an order instruction requiring that where an order would be a Locking Quotation of an external market or Crossing Quotation if displayed by the System on the EDGX Book at the time of entry, the order will be displayed and ranked at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). See EDGX Rule 11.6(l)(1)(A).

<sup>7</sup> “Display-Price Sliding” is an order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGX Book at the time of entry, will be ranked at the Locking Price in the EDGX Book and displayed by the System at one Minimum Price Variation lower

which are re-pricing instructions used for compliance with the Locked and Crossed Markets Rule. Thus, an executable order entered with a Post Only instruction is eligible to remove liquidity in the circumstances described in EDGX Rule 11.6(n)(4) instead of having its ranked price or display price adjusted pursuant to those order handling instructions.

However, the Exchange also offers a “Cancel Back” instruction that is not covered by EDGX Rule 11.6(n)(4). An order entered with a Cancel Back instruction is immediately cancelled instead of re-priced when displaying the order at its limit price would create a violation of the Locked and Crossed Markets Rule.<sup>8</sup> All orders must include a Price Adjust, Display-Price Sliding, or Cancel Back instruction,<sup>9</sup> and orders entered with a Post Only instruction are handled in the same manner regardless of which of these three additional instructions is applied. The Exchange therefore proposes to amend EDGX Rule 11.6(n)(4) to eliminate references to Display-Price Sliding and Price Adjust, similar to the current rules in place on its affiliated equities exchanges, Cboe BZX Exchange, Inc. (“BZX”) and Cboe BYX Exchange, Inc. (“BYX”).<sup>10</sup> The Exchange believes that removing the references to these two instructions in the rule would reduce potential confusion as the order handling described in the rule today applies to all orders entered with a Post Only instruction, and not a specific subset of those orders. No changes to the Exchange’s trading or other systems are contemplated by this proposed change, which is instead designed to increase transparency around the Exchange’s current operation.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(5) of

(higher) than the Locking Price for orders to buy (sell). See EDGX Rule 11.6(l)(1)(B).

<sup>8</sup> “Cancel Back” is an instruction the User may attach to an order instructing the System to immediately cancel the order when, if displayed by the System on the EDGX Book at the time of entry, or upon return to the System after being routed away, would create a violation of Rule 610(d) of Regulation NMS or Rule 201 of Regulation SHO, or the order cannot otherwise be executed or posted by the System to the EDGX Book at its limit price. See EDGX Rule 11.6(b).

<sup>9</sup> Display-Price Sliding is applied as the default handling unless Price Adjust or Cancel Back is elected [sic] See EDGX Rule 11.8(b)(10).

<sup>10</sup> See BZX Rule 11.9(c)(6) and BYX Rule 11.9(c)(6).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).



the Act,<sup>12</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change is consistent with the public interest and the protection of investors as it would avoid potential confusion about how an order is handled if entered with both a Post Only and Cancel Back instruction. Today, the Exchange's rules provide that an order entered into the EDGX Book with a Post Only instruction would remove liquidity in certain circumstances, such as when economically beneficial for the order. In addition, the rules specify that this handling applies to orders entered with a Price Adjust or Display-Price Sliding instruction. The rules, however, are silent as to the handling applied if an order with a Post Only instruction contains a Cancel Back instruction. The Exchange's order handling is, in fact, the same regardless of which of these instructions are chosen by the member. As such, the Exchange believes that it is appropriate to amend EDGX Rule 11.6(n)(4) to eliminate references to the Price Adjust or Display-Price Sliding instruction, thereby making clear that this handling applies to all orders entered with a Post Only instruction and not only those that also contain Price Adjust or Display-Price Sliding instructions.

The Exchange believes that this order handling, which mirrors that in place on the Exchange's affiliated equities markets (*i.e.*, BZX and BYX) is appropriate regardless of whether an order entered with a Post Only instruction also contains a Display-Price Sliding, Price Adjust, or Cancel Back instruction. Specifically, the Exchange believes that it is consistent with just and equitable principles of trade to permit an order entered with a Post Only instruction to remove liquidity when the order is an order to buy or sell a security priced below \$1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order. This handling is designed to ensure that orders entered with a Post Only instruction are eligible to trade in certain circumstances where the entering firm may have an interest in securing an execution on entry—*i.e.*, as the taker of liquidity—

notwithstanding the member's use of the Post Only instruction. Although the Exchange's rules currently mention order handling for the Display-Price Sliding and Price Adjust instructions specifically, this functionality should be applied equally to any order entered with a Post Only instruction. Thus, amending the rule as proposed would provide additional transparency into a feature offered by the Exchange that is potentially beneficial to members that utilize the Post Only instruction.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would remove ambiguity in the EDGX rules describing the Post Only instruction by amending those rules consistent with rules currently in place for the Exchange's affiliates, BZX and BYX. No change to the Exchange's order handling is contemplated by this proposed rule change, which would merely clarify the current handling for certain orders entered with a Post Only instruction. The Exchange therefore believes that the proposed rule change would increase transparency around the operation of the Exchange to the benefit of members and investors, without imposing any significant burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2019-014 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2019-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-014, and should be submitted on or before May 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85513; File No. SR-NASDAQ-2019-022]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend and Restate the Exchange's Membership Rules

April 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal [sic] to amend and restate the Exchange's membership rules, as discussed below.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange has adopted Rules, as set forth in the Rule 1000 Series, which prescribe the qualifications for and the procedures for applying for membership on the Exchange. The Exchange now proposes to update, reorganize and clarify these Rules, as described below.

As a general matter, the proposal makes several categories of changes to the Exchange's membership rules. First, the proposal reorganizes the rules so that they are arranged in a more logical order. Second, the proposal removes duplicative provisions, eliminates unnecessary complexity in the membership process, and otherwise streamlines the membership rules and their associated procedures. Third, the proposal relaxes needlessly rigid deadlines that the rules prescribe for taking certain actions with respect to membership applications. Fourth and finally, the proposal makes technical corrections and updates to the Rules, including by updating obsolete references to the National Association of Securities Dealers ("NASD," now known as "FINRA"), correcting the capitalization of defined terms (*e.g.*, "Member"), and generalizing references to the Exchange so as to facilitate harmonization of the Exchange's membership rules with those of its sister exchanges.

The Exchange does not believe that any of the proposed changes will adversely impact the existing rights of prospective or existing Members or Associated Persons. Likewise, the Exchange does not believe that the proposed changes will compromise the ability of the Exchange or its Membership Department to scrutinize prospective or existing Members or Associated Persons.

A summary of specific proposed changes follows.

###### Rule 1002

The proposal amends Rule 1002 in several respects. First, it deletes existing paragraph (c), which pertains to the payment by Members and Associated Persons of dues, fees, assessments and other charges, because the requirement of Members and Associated Persons to make such payments is set forth elsewhere in the Rules, such that existing paragraph (c) is unnecessary.<sup>3</sup> The Exchange also proposes to move existing paragraph (d), which governs the reinstatement of membership and registration, to a new Rule 1018 that will consolidate all provisions of the Rules relating to transfer, resignation, termination, and reinstatement of membership. Additionally, the Exchange proposes to consolidate and move to this Rule, as newly-renumbered paragraph (d), largely duplicative provisions relating to the registration of branch offices and the designation of offices of supervisory jurisdiction, which presently reside in Rule 1012(j) and IM-1002-4, respectively.<sup>4</sup> Within the new paragraph (d), the Exchange proposes to delete language from existing Rule 1012(j)(1) that requires a Member to pay dues, fees, and charges associated with a branch office—as that provision is superfluous for reasons discussed above. Under renumbered paragraph (d)(3)(A), the Exchange also proposes to simplify the existing rules for determining compliance with branch office registration and supervisory office designation requirements. Whereas the existing processes—as set forth in Rule 1012(j) and IM-1002-4—provide that Exchange Members that are also FINRA members are deemed to comply with the branch office and designated supervisory office requirements to the extent that they comply with NASD-1000-4 and Article IV, Section 8 of the NASD's By-Laws, the proposal provides that such Exchange Members are deemed to comply to the extent that they keep current Form BR, which

<sup>3</sup> See Rule 9553.

<sup>4</sup> In proposed subparagraph (d)(3)(B), the Exchange proposes to clarify the existing rule text in Rule 1012(j) and IM-1002-4, which provide that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a "written filing" to the Exchange "in such form as [the Exchange] may prescribe." The proposed change clarifies that this written filing is the "Branch Office Disclosure Form." The Branch Office Disclosure Form is presently in use for this purpose and it is not a new form. Nevertheless, the Exchange believes that it will be helpful in the Rule to identify the specific form that must be filed rather than refer vaguely to a filing in such form as the Exchange may prescribe.

contains the requisite information and which is accessible electronically to the Exchange. Members that are not FINRA members shall continue to submit to the Exchange a Branch Office Disclosure Form, as they have done previously.<sup>5</sup> Lastly, the Exchange proposes to move IM-1002-1, which prohibits a Member or an Associated Person from filing with the Exchange misleading information in connection with membership or registration, and requires misleading information to be corrected, to proposed amended Rule 1012 (General Application Provisions), where the Exchange believes it more logically fits.<sup>6</sup>

#### Rule 1011

In Rule 1011, which includes definitions for the Rule 1000 Series, the Exchange proposes to revise the defined term “Investment banking or securities business” to eliminate the reference to “investment banking” because the Exchange does not accept applications from firms that are engaged in the investment banking business but are not otherwise brokers or dealers in securities. The Exchange believes that references to the investment banking business in this provision and elsewhere in the Exchange’s membership rules are unintended errors.

In Rule 1011(g), the Exchange also proposes to delete the defined term “material change in business operations” and, as discussed below, to incorporate it into Rule 1017(a)(5), which is the only context in which it applies.

#### Rule 1012

The Exchange proposes to revise Rule 1012, which is presently entitled “General Provisions,” in several ways. Principally, the Exchange proposes to limit the scope of this Rule to include only general provisions relating to applications, and it proposes to amend the title of the Rule to reflect that narrowed scope (“General Application Provisions”). It also proposes to remove several existing provisions that are outside of this scope, including existing paragraphs (b) (lapses in applications),

(c) (ex parte communications), (d) (recusals and disqualifications from membership appeal proceedings), (g) (resignation of Exchange Members), (i) (transfer and termination of Exchange membership), and (j) (registration of branch offices). As is discussed in further detail below, the Exchange proposes to move these provisions to other Rules to which they more logically relate. The Exchange does not believe that moving these provisions as described will have any substantive effect.

In Rule 1012(a), which is presently entitled “Filing by Applicant or Service by Nasdaq,” the Exchange proposes to retitle the paragraph for clarity purposes as “Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange.” In subparagraph (a)(1), which presently permits an Applicant to file an application only by first-class mail, overnight courier, or hand delivery, the Exchange proposes to modernize the provision by allowing for electronic filing as well. In a new subparagraph (a)(3)(E), the Exchange proposes to state that service by electronic filing shall be deemed complete on the day of transmission, except that service or filing will not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

Furthermore, the Exchange proposes to eliminate existing paragraph (f) (similarity of membership names) because the Exchange believes that it is unnecessary for it to monitor for similarities in the names of prospective Members given that FINRA, through WebCRD, and the SEC monitor this.

Finally, the Exchange proposes to relocate and restate IM-1002-1 (regarding misleading information as to membership or registration) and the last paragraph of Rule 1013(a)(1) (requiring Members and Applicants to keep application materials current) to Rule 1012(c). Rather than state, as does IM-1002-1, that Applicants, Members, and Associated Persons shall not file false or misleading membership information with the Exchange, the Exchange proposes to state in paragraph (c)(1) that they shall have an affirmative duty to ensure that their membership information is accurate, complete, and current at the time of filing. The Exchange believes that the proposed formulation is more comprehensive than the existing one.<sup>7</sup> Likewise, rather

than merely require, as does existing Rule 1013(a)(1), that Applicants shall keep current their application materials after filing them, the Exchange proposes more broadly, in paragraph (c)(2), to require Applicants, Members, and Associated Persons to ensure that their membership applications and supporting materials remain accurate, complete, and current at all times, by filing supplementary amendments with the Department, as is necessary. (The Exchange proposes to remove the language in existing Rule 1013(a)(1) that specifies that supplementary amendments shall be filed by electronic means insofar as Rule 1012(a) will now specify the acceptable methods by which membership materials shall be filed with the Department.)

#### Rule 1013

The Exchange proposes to substantially restate Rule 1013, which sets forth procedures for filing applications for new membership on the Exchange.

In paragraph (a) of Rule 1013, which describes the contents of new membership applications and procedures for filing, the Exchange proposes to amend subparagraphs (a)(1)(A) and (B), which require an Applicant to file a copy of its current Form BD as well as an Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2,<sup>8</sup> to provide that the Applicant must do so only if the Exchange is not able to access the Form itself or the fingerprints through the Central Registration Depository (“CRD” or “WebCRD”) or a similar source. The Exchange proposes this amendment to relieve Applicants of the burden of filing a Form or fingerprint cards that the Exchange can readily retrieve itself.

In subparagraph (a)(1)(C), which presently requires an Applicant to provide a “check” for such fees as it may be required to pay under the Exchange’s Rules, the Exchange proposes to delete the word “check” and replace it with a more general term, “payment,” so as to afford an Applicant flexibility to pay the fee through additional means, such as wire transfer.

In subparagraph (a)(1)(G), which requires disclosure of the Applicant’s principal place of business and “all other offices, if any, whether or not such offices would be required to be registered under the Nasdaq Rules,” the Exchange proposes to clarify the provision by specifying that it applies to

<sup>5</sup> The existing Rule states that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange “a written filing in such form as [the Exchange] may prescribe.” The form that the Exchange presently prescribes for this purpose is the Branch Office Disclosure Form. To improve clarity, the Exchange proposes to identify this form by name in the Rule. The Exchange proposes no substantive changes to this Form.

<sup>6</sup> The Exchange also amends the definition of a “Proprietary Trading Firm” in paragraph (o) to make clear that such entities may be both Applicants and Members of the Exchange for purposes of the Rules.

<sup>7</sup> The reformatted text also removes the references in IM-1002-1 to registration decisions (which are now covered elsewhere in the Exchange’s Rules).

<sup>8</sup> The existing provision exempts Applicants from filing fingerprint cards if it has already filed them with another self-regulatory organization.

“branch” offices. The Exchange also proposes to delete the phrase “whether or not such offices would be required to be registered under the Nasdaq Rules,” as the Exchange deems it unnecessary for the Applicant to list offices other than those that must be registered. Finally, the Exchange again proposes to state that an Applicant need not separately provide this branch office information to the Exchange to the extent that the information is otherwise available to the Exchange electronically through WebCRD or a similar source.

Next, the Exchange proposes to consolidate subparagraphs (a)(1)(J) and (a)(1)(K). In subparagraph (a)(1)(J), where the Exchange presently requires the Applicant to state whether it is currently or has been in the prior ten years the subject of certain investigations or disciplinary proceedings that have not been reported to the CRD, the Exchange proposes to add language—currently in subparagraph (a)(1)(K)—which states that the obligation to disclose the Applicant’s disciplinary history pertains, not only to the Applicant itself, but also “any person listed on Schedule A of the Applicant’s Form BD.”<sup>9</sup> With this amendment, subparagraph (a)(1)(K) is duplicative of (a)(1)(J), such that the Exchange proposes to delete it.

In subparagraph (a)(1)(N), which requires an Applicant to disclose how it complies with Rule 3011, the Exchange proposes to clarify that Rule 3011 requires Members to have anti-money laundering compliance programs.

In subparagraph (a)(1)(P), the Exchange proposes to delete language that presently permits an Applicant to submit a Form U–4 for each person conducting and supervising the conduct of the Applicant’s market making and other trading activities. The Exchange proposes to delete the requirement that an Applicant submit a Form U–4 because the information that the Form contains is otherwise accessible to the Exchange through WebCRD, such that submission of the Form itself is unnecessary.

In subparagraph (a)(1)(Q), the Exchange proposes to delete the requirement that the Applicant provide to the Exchange a FINRA Entitlement Program agreement and Terms of Use and an Account Administration Entitlement Form, if not previously provided to FINRA. The Exchange proposes to delete this requirement

because the Exchange has determined that the requirement is unnecessary. Any Applicant for membership will have already completed and submitted this agreement and form prior to applying to the Exchange. The completion and submission of the agreement and form will be evident to the Exchange from the fact that FINRA has granted the Applicant access to WebCRD. The Exchange understands that completion of the Account Administration Entitlement Form is a prerequisite to the creation of a registered BD and receiving WebCRD access.

The Exchange proposes to amend subparagraphs (a)(1)(T), (U), and (V) of the Rule, which presently require an Applicant to submit to the Exchange an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Exchange’s Rules, and all rulings, orders, directions, decisions, and sanctions thereunder, as well as an agreement to pay such dues, assessments, and other charges in the manner and in the amount as the Exchange prescribes. The Exchange proposes to preface these requirements with a more general requirement that an Applicant submit a duly executed copy of the Exchange’s Membership Agreement. The Membership Agreement comprises the foregoing commitments, among others, and Applicants presently submit an executed copy of the Membership Agreement to satisfy existing subparagraphs (a)(1)(T) and (U). The Exchange proposes to insert the new language in subparagraph (a)(1)(T) and move the language in existing subparagraphs (a)(1)(T) and (U) to new subparagraphs (a)(1)(T)(1) and (2). The Exchange proposes to renumber existing subparagraph (a)(1)(V) as subparagraph (a)(1)(U).

The Exchange proposes to delete existing subparagraph (a)(2) of the Rule, which presently requires an Applicant to submit uniform registration forms, due to the fact that the information that these forms contain is readily accessible to the Exchange through WebCRD.

Next, the Exchange proposes to restate its requirements and procedures for deeming applications to be filed, for dealing with incomplete applications, and for requesting additional information from an Applicant or a third party in connection with a pending application. The Exchange is restating these requirements and procedures to improve their clarity, to relax certain procedural deadlines that are needlessly rigid, and to provide additional due process to Applicants.

First, in lieu of the deleted text in subparagraph (a)(2), the Exchange

proposes to insert a new provision, entitled “When an Application is Deemed to be Filed,” which states what is now only implied in Rule 1013—that the Department will deem an application to be filed on the date when it is “substantially complete,” meaning the date on which the Department receives from the Applicant all material documentation and information required under Rule 1013. The Exchange believes that Applicants will benefit from this clarification, particularly because it affords the Department discretion to deem an application to be filed when it obtains sufficient information or documentation from the Applicant to enable the Department to commence processing the application. The new provision also would require the Department to inform the Applicant in writing when the Exchange deems an application to be substantially complete so that there will be no ambiguity as to when the Department will begin to process the application.

Second, the Exchange proposes to delete existing subparagraph (a)(3), which presently governs the rejection of applications that are not substantially complete, and it proposes to replace the deleted text with two new provisions that deal with lapses in applications that are not substantially complete, and the rejection of filed applications that remain or become incomplete after filing.

New subparagraph (a)(3)(A), which will govern lapses of applications, will also replace existing Rule 1012(b). The new provision states that if the Department does not deem an application to be substantially complete (and thereby filed, in accordance with proposed subparagraph (a)(2)) within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, such the Department will take no action in furtherance of the application. The proposal is conceptually different from existing Rule 1012(b). The proposal conceives of a lapsed application as one that an Applicant initiates but does not substantially complete even after a prolonged period of time, such that the Department treats it as having been abandoned prior to filing. Under existing Rule 1012(b), by contrast, the Exchange treats lapses more broadly as any unexcused failure of an Applicant to complete an application, to respond to the Department’s requests for information or documents, to participate in a membership interview, or to file with

<sup>9</sup> Such persons listed on Form BD include the Applicant’s direct owners (as that term is defined on Form BD), and certain partners, trusts and trustees, and limited liability company members, and executive officers of the Applicant.

the Exchange an executed membership agreement. As is discussed below, the proposal will treat an Applicant's post-filing non-responsiveness to the Department's requirements as a basis for rejection of an application, not a lapse of an application, because once an application is deemed filed, the Department will begin to take action in furtherance of the application. Also unlike the existing Rule, the proposal provides that the Department merely has discretion to, but need not deem an application to have lapsed once it meets the requirements of the subparagraph. Moreover, the proposal requires that once the Department deems an application to have lapsed, then the Department must serve a written notice of that determination on the Applicant and refund any application fees that the Applicant paid to the Exchange (provided that the Exchange did not, in fact, take action in furtherance of the lapsed application). Finally, the proposal states that an Applicant that still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application must submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable.

Proposed subparagraph (a)(3)(B) will govern the circumstances in which the Department may reject an application that it already has deemed to be "substantially complete" and thus filed. Specifically, the Exchange proposes that if a pending application remains incomplete after filing, or becomes incomplete after filing due to the fact that the Applicant has not timely responded to the Department's request for supplemental information or documents, then the Department will serve notice on the Applicant of the nature of the incompleteness and afford the Applicant a reasonable time period in which to address it. If the Applicant fails to address the incompleteness within the time period that the Department prescribes in the notice, then, absent a showing of good cause by the Applicant, the Department may—but again it is not required to—deem the application to be rejected and it must serve written notice of any such determination upon the Applicant. The proposal states, moreover, that if the Department deems an application to be rejected, then the Applicant shall not be entitled to a refund of any fees that the Applicant may have paid in connection with its application so that the Exchange can recover its costs associated with processing the filed application prior to rejecting it. Finally, the proposal states that if an Applicant

chooses to continue to pursue membership following a rejection of its application, then it must submit a new application and pay any associated fees that are required under the Rule.

Third, the Exchange proposes to restate subparagraph (a)(4), which governs requests made by the Department for additional information or documents during its consideration of an application. The Exchange also proposes to restate and consolidate into subparagraph (a)(4) the provision of Rule 1013 that governs membership interviews and information pertinent to the application that the Department gathers from third party sources other than the Applicant (existing paragraph (b)). The Exchange believes that rules governing supplemental information and document requests, membership interviews, and third party information are related and should be consolidated into a single provision. Moreover, the Exchange notes that it does not, as a practical matter, opt to conduct formal membership interviews because it is more efficient and less onerous for all parties to instead engage in informal discussions when questions and concerns arise. Because the Exchange does not exercise its discretion to conduct formal interviews the Exchange believes that it is reasonable to eliminate the concept and the procedures that govern such interviews in the new subparagraph.

In particular, the proposed restated subparagraph provides that at any time before the Department serves its decision on a membership application,<sup>10</sup> it may issue a request for additional information or documents—either from the Applicant or from a third party—if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The proposal states that the Department may request that the information or documentation be provided in writing or through an in-person or telephonic interview. The proposal furthermore states that the Department shall serve its request in writing. The proposal states that the Department must afford the recipient a reasonable amount of time

within which to respond to the request<sup>11</sup> and that the failure of an Applicant to respond within the allotted time may serve as a basis for the Department to reject an application under subparagraph (a)(3)(B), described above. Finally, the proposal for the first time affords the Applicant due process in the event that the Department obtains information or documentation about the Applicant from a third party that the Department reasonably believes could adversely impact its decision on an application.<sup>12</sup> In such a circumstance, the proposal requires the Department to promptly inform the Applicant in writing and describe the third party information or documentation that the Department obtained. The Department must also afford the Applicant a reasonable opportunity to discuss with it or object to the Department's use of the third party information or documentation in its application decision prior to the Department rendering the decision.

Fourth, the Exchange proposes to establish a new Rule 1013(b), entitled "Special Application Procedures," which restates and expands upon the existing special application procedures set forth in subparagraph (a)(5). Presently, subparagraph (a)(5)(A) states that when an Applicant is applying for FINRA membership and Exchange membership at the same time, then the Exchange will wait to process the application until the applicant becomes a FINRA member.<sup>13</sup> Presently, subparagraph (a)(5)(C) states that expedited application procedures will apply to Applicants that are already members of FINRA and Nasdaq BX, Inc. or Nasdaq PHLX LLC. The Exchange proposes to delete subparagraph (a)(5)(A) and (B) because the Exchange, upon review, believes that these provision add little value, especially in light of other changes that the Exchange

<sup>11</sup> Rather than impose a minimum time period for a response, the Exchange proposes to require only that the Department prescribe a reasonable deadline for a response. The Exchange believes that the appropriate response period will vary depending upon the nature of the information or documentation requested. Moreover, the Exchange again believes that the Department and the Applicant have a shared interest in ensuring that the Applicant has adequate time to respond to a request.

<sup>12</sup> The Department may consult third parties, such as other SROs of which an Applicant is or was a member previously, to obtain additional information about or to confirm aspects of an application or the Applicant's character or history. The Department might also consult third party services to investigate or verify the Applicant's financial condition or history.

<sup>13</sup> Existing subparagraph (a)(5)(B) also specifies that Applicants that are already members of another registered securities association or exchange must submit a regular application form.

<sup>10</sup> The restated provision eliminates the requirement in the existing Rule that the Department must serve an initial supplemental request for information or documents within 15 business days after an application is deemed to be filed. The Exchange finds no good reason to distinguish in the rule between an "initial" and a subsequent supplemental Departmental request or to impose a specific deadline for the Department to issue any such requests; the Department has a shared interest with the Applicant in issuing supplemental requests expeditiously such that no artificial deadline is necessary.

now proposes to adopt. Likewise, the Exchange proposes to delete (a)(5)(C) because it has become outdated in that it does not provide expedited application procedures for Applicants that are members of the Exchange's other affiliates; this provision also does not explain what an "expedited" application process entails.

In lieu of the existing subparagraph (a)(5), the Exchange proposes to adopt two types of special applications in new Rule 1013(b). First, proposed Rule 1013(b)(1) prescribes a special application process for Applicants that are already FINRA members. Specifically, the proposal states that such an Applicant will have the option to "waive-in" to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). The proposal defines the term "waive-in" to mean that the Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership. That is, the Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Department is not otherwise aware of any basis set forth in Rule 1014 to deny or condition approval of the application.

Procedurally, the proposal states that a FINRA member that wishes to waive-into Exchange membership must do so by submitting to the Department an application form (the standard application form contains an option to select waive-in membership) and an executed Exchange Membership Agreement. The Department, in turn, will act upon a duly submitted waive-in application within a reasonable time frame not to exceed 20 days from submission of the application, unless the Department and the Applicant agree to a longer time frame for issuing a decision.<sup>14</sup> If the Department fails to issue a decision on a waive-in application within the prescribed time frame, then the Applicant may petition the Exchange's Board of Directors to force the Department to act, as set forth

in Rule 1014(c)(3). Finally, the proposal states that a decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

The second proposed special application process, to be set forth in Rule 1013(b)(2), will permit Applicants for Exchange membership that are already approved members of one or more of the Exchange's affiliated exchanges<sup>15</sup> to waive-into the Exchange membership. In this context, "waive-in" means that the Department will rely substantially upon an Affiliated Exchange's prior determination to approve the Applicant for membership on the Affiliated Exchange when the Department evaluates the Applicant for Exchange membership. The proposed procedures for an Applicant to submit a waive-in application under this provision and for the Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Exchange membership. The Exchange proposes to amend its application form to reflect the fact that Applicants may waive-into membership on the Exchange based upon their membership on any of the other five Affiliated Exchanges.

#### Rule 1014

In several respects, the Exchange proposes to amend Rule 1014, which governs the issuance of membership application decisions by the Department.

First, to improve clarity, the Exchange proposes to reorganize the Rule. Rather than begin the Rule with a paragraph that describes the bases for the Department to issue a decision on an application, as is the case presently, the Exchange proposes to begin with a paragraph (a) to be entitled "Authority of Department to Approve, Approve with Restrictions, or Deny an Application." This new paragraph sets forth the general authority of the Department to act on an application by approving it, denying it, or approving it subject to restrictions: (1) That are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investigatory, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an Affiliated Exchange. It incorporates elements of

what is now Rule 1014(b) (which the Exchange proposes to delete going forward).

Second, the Exchange proposes to renumber existing paragraph (a) as new paragraph (b). This paragraph will be retitled "Bases for Approval, Conditional Approval, or Denial" but will otherwise remain the same.

Third, as noted above, existing paragraph (b) will be deleted.

Fourth, the Exchange proposes to amend paragraph (c), which prescribes the time period within which the Department must issue and serve a written decision on a membership application. Presently, the provision requires the Department to serve a written decision within 15 business days after the Applicant concludes its membership interview (if any) or files all of its required information or documents, whichever is later. The Exchange proposes to relax this requirement by stating that the Department must respond in a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application, unless the Department and the Applicant agree to further extend the decision deadline.<sup>16</sup> The Exchange proposes these amendments because it adjudges the existing timeframe to be needlessly short and inflexible. In certain instances where the Department has outstanding questions or concerns associated with an application, the existing Rule may force the parties to rush to address outstanding questions and resolve outstanding issues. The proposal would allow for such questions and issues to be addressed with less time pressure involved. The Exchange notes that it does not intend for this proposal to routinely lengthen the Department's timeframe for serving application decisions. Under the existing Rule, the Exchange typically issues decisions far in advance of the 15 business day deadline and the Exchange expects that it will continue to do so in most instances. Indeed, the Exchange has a self-interest in issuing decisions as soon as is possible. The proposed 45 day decision period is merely intended to allow for the parties to have flexibility in unusual circumstances.

Fifth, the Exchange proposes to delete existing paragraph (d), which states that a decision by the Department to approve an application is contingent upon the

<sup>14</sup> The Exchange proposes this time frame to accommodate FINRA, which will review waive-in applications on behalf of the Exchange to verify that the Applicants are FINRA members in good standing. As a practical matter, the Exchange expects to act on waive-in applications prior to the 20 day deadline.

<sup>15</sup> The Nasdaq Stock Exchange, LLC, Nasdaq BX, Inc., Nasdaq PHLX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq GEMX, LLC are all affiliated exchanges (the "Affiliated Exchanges").

<sup>16</sup> The Exchange also proposes conforming amendments to Rule 1014(c)(3), which addresses failures of the Department to serve a decision within the prescribed time frame.

Applicant filing with the Department an executed written membership agreement that contains the Applicant's agreement to abide by any restriction specified in the Department's decision and to obtain the Department's approval prior to undertaking a change in ownership, control, or business operations, or prior to modifying or removing a membership restriction. The Exchange proposes to delete this provision because, as explained above, the Exchange proposes in Rule 1013 to expressly require an Applicant to file a duly executed copy of the Membership Agreement as part of its application. The existing Membership Agreement contains the undertakings described in paragraph (d). Accordingly, paragraph (d) is superfluous.

#### Rule 1015

The Exchange proposes to amend Rule 1015, which states that the Department's membership decisions are subject to review by the Exchange Review Council. Specifically, the Exchange proposes to move from existing Rule 1012(c) to new Rule 1015(k) a provision that prohibits *ex parte* communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Similarly, the Exchange proposes to move from existing Rule 1012(d) to new Rule 1015(l) a provision that governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Exchange proposes these moves because it believes that these two provisions fit logically within the section of the membership rules that govern appeals of membership decisions. The Exchange proposes no substantive changes to these provisions<sup>17</sup> and it does not believe that moving them will have any substantive effect.

#### Rule 1017

The Exchange proposes substantial changes to Rule 1017, which requires Members to obtain approval prior to effecting a change in ownership, control, or business operations. These changes are generally intended to streamline and simplify the existing Rule, which the Exchange believes are unnecessary onerous and complex. As

much as possible, the Exchange proposes to apply the same procedures to these applications for approval as it does to its applications for membership under Rules 1013 and 1014.

The first change that the Exchange proposes involves Rule 1017(a), which defines the events that require Members to file applications. The existing paragraph states that a Member shall file an application for approval prior to effecting the following changes: (1) A merger of the Member with another Member (unless both are members or the surviving member will continue to be a member of the New York Stock Exchange ("NYSE")); (2) a direct or indirect acquisition by the Member of another Member (unless the acquiring Member is a member of the NYSE); (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36 month basis (unless both the seller and acquirer are members of the NYSE); (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a "material change in business operations." Existing Rule 1011(g), in turn, defines a "material change in business operations" to mean, among other things: (1) Removing or modifying a membership restriction; (2) acting as a dealer for the first time; (3) market making for the first time on the Exchange (except when the member's market making has been approved previously by FINRA or Nasdaq BX); (4) adding business activities that require higher minimum net capital under SEC Rule 15c3-1; and (5) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the rule.

For ease of reference, the Exchange proposes to incorporate into Rule 1017(a)(5) the definition of a "material change in business operations" rather than define it separately in Rule 1011(g). The Exchange also proposes to take the existing exclusion from that definition—excluding first time market makers on the Exchange whose market making activities have been approved previously by FINRA or Nasdaq BX—and apply it more broadly to all of Rule 1017(a). That is, the Exchange proposes that none of the changes enumerated in Rule 1017(a) would require prior Departmental approval to the extent that

the Member's Designated Examining Authority ("DEA"), or an Affiliated Exchange, has approved the change previously in accordance with their respective rules and provided that the Member provides written evidence to the Department of such prior approval. The Exchange believes that this proposal is prudent because in all instances in which a Member's DEA or any Affiliated Exchange<sup>18</sup> have already approved a change, the Exchange can be reasonably confident that such prior approval would be consistent with its own judgment on the matter, such that no purpose would be served in requiring the Department to independently approve the same change.<sup>19</sup> The proposal would also ease burdens on Members that wish to make changes to their businesses and which presently require multiple approvals to do so. The Exchange notes that it proposes to retain authority to require approval of a proposed change where the nature, terms, or conditions of the change have altered since the Member's DEA or an Affiliated Exchange approved it.

Next, the Exchange proposes to make several organizational and clarifying amendments to Rule 1017(b), which governs the filing and content of applications filed under Rule 1017. It proposes to preface subparagraph (b)(2)—which presently states vaguely that the "application" shall contain certain items—with language clarifying that the provision pertains to applications for approval of a change in ownership or control or a material change in the business operations of a member. It also breaks out the last sentence of (b)(2) into new subparagraphs (2)(A) and (2)(B). Furthermore, it proposes clarifying changes in (2)(A) (proposing to specify that a description of a "change in ownership, control, or business operations" means a "proposed" change in ownership, control, or "material" business operations) and (2)(B)

<sup>18</sup> Exchange notes that the existing Rule is under-inclusive in that it does not account for prior approvals granted by all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq BX and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

<sup>19</sup> In Rule 1017(a), the Exchange also proposes to eliminate exceptions relating to NYSE membership. The Exchange believes that this proposal is reasonable insofar as the NYSE's rules may, at times, diverge with those of the Exchange. Going forward, the Exchange feels more confident deferring to the prior judgment of a Member's DEA or of an Affiliated Exchange as to the specific change event at issue than it does to the mere fact that a Member or its counterparty in a business transaction are NYSE members.

<sup>17</sup> The Exchange proposes to remove the requirement from Rule 1015(a) that an applicant file a request for review "by first-class mail." Rule 1012(a) now provides for a more modern array of filing options that includes electronic submission.



(specifying that the Member must “attach” rather than “include” a business plan, pro forma financials, an organizational chart, and written supervisory procedures relating to the “proposed” change). Finally, the Exchange proposes to renumber the remainder of the Rule.

The Exchange proposes to amend Rule 1017(c) to limit its scope. Specifically, it proposes to eliminate from subparagraph (c)(1) the ability of a Member to effect a change in ownership or control prior to receiving approval from the Department and the ability of the Department to impose interim restrictions on the Member pending final Department approval. The Exchange believes that the concepts of interim changes and restrictions are overly complex, potentially disruptive, and ultimately unnecessary given the short time frames that the Rules prescribe for the Department to act on applications.<sup>20</sup> Additionally, the Exchange notes that in its experience reviewing applications under Rule 1017, these provisions never have been invoked. Finally, the Exchange proposes to change the title of this provision to reflect the deletion of the foregoing. Whereas now, the title is “Effecting Change and Imposition of Interim Restrictions,” the Exchange proposes to re-title it as “When Applications Shall or May Be Filed.”

Existing paragraphs (d), (e), and (f) of Rule 1017, prescribes standards for rejecting applications that are not substantially complete, authorizes the Department to serve a request for additional documents and information, and permits the Department to conduct interviews of Applicants, respectively. The Exchange proposes to delete these provisions and replace them with provisions that are more consistent with proposed amended Rule 1013(a)(2), (3), and (4). That is, new Rule 1017(d) will state that the Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under the Rule. It also requires the Department to inform the Applicant in writing when the Department deems an application to be substantially complete. New Rule 1017(d) will state that the Department may treat an

application filed under this Rule as having lapsed, and the Department may reject an application filed under this Rule, in accordance with Rule 1013(a)(3), except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the applicant initiates it.<sup>21</sup> Finally, proposed Rule 1017(f) will state that at any time before the Department serves its decision on an application filed under Rule 1017, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).<sup>22</sup>

Existing Rule 1017(g) prescribes a complex system for the Department to issue decisions in response to applications filed under Rule 1017. For example, it differentiates between decisions issued with respect to Members that are and are not FINRA members (or required to be FINRA members). With respect to Members that are FINRA members, the Rule requires the Department to consider whether the Applicant and its Associated Persons meet the standards set forth in NASD (FINRA) Rule 1014(a). It also prescribes specific criteria for issuing decisions where the Applicant seeks a modification or removal of a membership restriction. The Exchange believes that this complex system is unnecessary and can be simplified considerably, particularly in light of the proposal described above to exempt a Member from obtaining the Exchange’s approval to effect a change in ownership or control or a material change in its business operations when FINRA has already approved the change previously. That is, there is no reason for the Exchange to make an independent assessment of whether the proposed change complies with FINRA rules if FINRA has already made that determination.

In lieu of the existing provisions, the Exchange proposes to state that the Department will render a decision on an application filed under Rule 1017 in accordance with the standards set forth in Rule 1014, except with respect to applications to modify or remove a membership restriction, in which case the Department will consider the factors presently set forth in existing Rule

1017(g)(1)(D) (the Exchange proposes to renumber this provision as subparagraph (g)(1)).

Additionally, in lieu of existing Rule 1017(g)(2), which requires the Department to serve a written decision on an application filed under Rule 1017 within 30 (calendar days) after conclusion of a membership interview or the filing of additional information or documents (whichever is later), the Exchange proposes to state that the Department will serve a written decision in accordance with Rule 1013(c).<sup>23</sup> The Exchange proposes this change to 1017(g)(2) for the same reasons that it discussed above with respect to Rule 1013(c).

Finally, the Exchange proposes to delete Rule 1017(k). This provision presently states that if an application for approval of a change in ownership lapses or is denied and all appeals are exhausted or waived, the Member must, within 60 days, submit a new application, unwind the transaction, or file a Form BDW. It also provides for the Department to shorten or lengthen the 60 day period under certain circumstances. Due to the fact that the Exchange—as explained previously—proposes to eliminate the ability of a Member to effect a change in ownership while its application for Departmental approval is pending, this provision will no longer be necessary. That is, there will be no interim change in ownership that will need to be unwound or otherwise addressed if the Department denies an application or it lapses.

#### Rule 1018

The Exchange proposes to consolidate within Rule 1018, which is presently reserved, existing provisions of the Rules pertaining to the resignation of members (existing Rule 1012(g), transfer of membership (existing Rule 1012(i)(1)), termination of membership (existing Rule 1012(i)(2)), and reinstatement of membership (existing Rule 1002(d)). The Exchange believes that these provisions are logically related and belong together in a single Rule. The Exchange generally proposes to maintain the substance of these consolidated provisions unchanged from their existing state, except that the Exchange proposes that resignations will no longer require a 30 day time period to become effective. Also, the provision on reinstatement will apply to

<sup>20</sup> The Exchange also notes that FINRA is also publicly contemplating eliminating the concept of allowing its members to effect business changes on an interim basis. See FINRA, Regulatory Notice 18-23: Membership Application Proceedings (Request for Public Comment), Attachment B (July 26, 2018), available at [http://www.finra.org/sites/default/files/Attachment-B\\_Regulatory-Notice-18-23.pdf](http://www.finra.org/sites/default/files/Attachment-B_Regulatory-Notice-18-23.pdf).

<sup>21</sup> The Exchange notes that this 30 day time period for deeming an application to have lapsed derives from existing Rule 1017(d).

<sup>22</sup> As stated previously, circumstances where the Department may consult a third party include to seek additional information about or to verify aspects of an application. For example, the Department may consult another SRO to verify the financial status or prior disciplinary history of a Member’s prospective new ownership.

<sup>23</sup> The Exchange notes that the proposed cross-reference to Rule 1013(c) also addresses the Applicant’s rights in the event that the Department does not serve it with a timely written decision. Accordingly, the Exchange proposes to delete existing subparagraph (g)(3), which covers the same topic.



membership only and not to registration, which is covered separately in the Exchange's Rules.

#### Other Miscellaneous Changes

Lastly, the Exchange proposes to make non-substantive changes throughout the Rule 1000 Series, as follows. Where the Rules refer specifically to "Nasdaq," the Exchange proposes to replace such references with more general terms "Exchange" or "the Exchange." The Exchange proposes this change to make it easier in the future to harmonize the Exchange's membership rules with those of the other Affiliated Exchanges. The Exchange also proposes to update obsolete references to the "NASD" to reflect the fact that the NASD is now known as "FINRA." Finally, where applicable, the Exchange proposes to renumber the Rules and update or correct cross-references.

#### Implementation

To facilitate an orderly transition from the existing membership rules to the new rules, the Exchange is proposing to apply the existing rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application is pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional Rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the

objectives of Section 6(b)(5) and of the Act,<sup>25</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.<sup>26</sup>

As a general matter, the Exchange believes that its proposal to amend its membership Rules will promote a free and open market, and will benefit investors, the public, and the markets, because it will render the Rules clearer, better organized, simpler, and easier to comply with.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a "roadmap" paragraph in proposed Rule 1014(a) that sets forth the basic authority of the Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Department to apply when taking each of those actions;
- Making the titles of the Rules more accurate and descriptive (e.g., proposed Rule 1014(b) (amending the existing title "Bases for Denial" to also include bases for approval and conditional approval to make it more accurate and complete));
- Grouping logically-related provisions together in the Rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership (moving them from Rule 1002(d) and 1012(g) and (i) to proposed Rule 1018); provisions relating to *ex parte* communications (existing Rule 1012(c)) and recusals and disqualifications (existing Rule 1012(d) (moving them into Rule 1015, which governs reviews of membership decisions));
- Rationalizing and consolidating provisions that presently govern lapses and rejections of applications, including by making clearer conceptual distinctions between lapses (*i.e.*, applications that are not substantially complete and which the Department may deem to be abandoned, such that

the Department will refund any application fees paid by the Applicant) and rejections (*i.e.*, applications that the Department deemed to be filed but which it refuses to act upon due to lingering incompleteness, in which case the Department will not refund application fees paid to it), and by consolidating Rules 1012(b) and 1013(a)(3) into proposed Rule 1013(a)(3)(A) and (B);

- Consolidating overlapping provisions that govern the registration of branch offices and office of supervisory jurisdiction into a single provision (consolidating Rule 1012(j) and IM-1002-4 into Rule 1002(d));
- Eliminating references in Rule 1002(c), Rule 1012(j), and Rule 1013(a)(1)(U) to the obligation of Members (and their branch offices) to pay fees, charges, dues, and assessments to the Exchange insofar as those obligations are duplicative of Rule 9553;
- Converting IM-1002-1 and IM-1002-4 into rule text;
- Clarifying when the Department will deem an application to be filed (when the application is "substantially complete," as set forth in proposed Rule 1013(a)(2)) and by requiring the Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may "waive-in" to Exchange membership (as set forth in proposed Rule 1013(b)); and
- Updating obsolete cross-references throughout the Rules from NASD to FINRA.

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms (Rule 1013(a)(1)(A), (J), (K), and (P) and Rule 1013(a)(2)) where the Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (proposed Rule 1012(a)(1));
- Allowing payment of application fees by means other than paper check (proposed Rule 1013(a)(1)(C));
- Relaxing deadlines that needlessly rush the process of responding to the Department's questions and concerns about an application<sup>27</sup> or that force the

<sup>27</sup> Rather than require an Applicant to file a response to a supplemental request for documents or information within 15 business days, proposed Rule 1013(a)(3) states that the Applicant must respond within a "reasonable period of time" to be prescribed by the Department. Even then, Rule

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78f(b)(7).

Department to render a decision when the Applicant is not ready for the Department to do so;<sup>28</sup>

- Eliminating formal membership interviews and procedures related thereto, which the Exchange has not utilized historically (Rule 1013(b));<sup>29</sup>
- Harmonizing disparate procedures under Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes, including by streamlining the Rule 1017 procedures;

- Broadening the circumstances in which an Applicant may waive into Exchange membership to include the Applicant's membership in any of the Affiliated Exchanges<sup>30</sup> and defining procedures for processing and responding to waive-in applications (proposed Rule 1013(b));

- Narrowing the circumstances in which a Member must obtain prior Department approval before effecting a change in ownership, control, or material business operations by excluding changes for which a Member has obtained prior approval from the Member's DEA, or an Affiliated Exchange (proposed Rule 1017(a));<sup>31</sup>

1013(a)(3)(B) states that the Department must serve upon the Applicant a notice of incompleteness if it fails to respond to a supplemental request and then afford the Applicant an additional reasonable time period to remedy the failure before it may reject the Applicant's application.

<sup>28</sup> Rather than require the Department to serve a written decision within 15 business days, proposed Rule 1014(c) states that it must issue a decision within a reasonable period of time, not to exceed 45 calendar days after the application is filed and complete, unless the parties agree to a later date. As explained above, the Exchange does not intend for this change to result in the Department routinely issuing decisions later than it does presently. The Exchange presently issues decisions, in most instances, well in advance of the current 15 business day deadline and it has a self-interest in continuing to do so whenever possible. However, the Exchange believes that it is in the interest of Applicants for the Department to have discretion to respond at a later time in the event that the Applicant needs to address or resolve outstanding questions or concerns associated with its application.

<sup>29</sup> The elimination of the formal membership interview process will have no practical effect on the membership process insofar as the Department otherwise has authority to request additional information from the Applicant. Under the proposed Rule 1014(a)(4), this authority may include a request for the Applicant to provide information or documents in-person or by telephone. In other words, the Department will retain authority to conduct an informal interview of the Applicant.

<sup>30</sup> As noted above, the Exchange believes that it is reasonable to permit reciprocity in membership among all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq BX and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

<sup>31</sup> As is discussed above, the Exchange believes that deference to prior approvals of a proposed

- Eliminating the unused, unnecessary, and potentially disruptive ability of Members, pursuant to Rule 1017(c), to effect ownership changes on an interim basis while an application for Department approval is pending; and
- Eliminating the 30 day waiting period for Members that seek to resign their memberships under proposed Rule 1018(a).

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Departmental decisions under these Rules or to request Board action to compel the Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act<sup>32</sup> because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional Rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the

business change made by an Affiliated Exchange or the Exchange's DEA is reasonable because the judgment of these entities on such matters is likely to be the same as that which the Exchange would itself employ. The Exchange assesses that any marginal benefit that might be gained from it applying its own independent judgment outweighs the burden to Applicants of obtaining multiple approvals for the same proposed change. The Exchange notes that it will require a Member to obtain approval for such a change if the nature, terms, or conditions of the proposed change have altered since its DEA or an Affiliated Exchange approved it.

<sup>32</sup> 15 U.S.C. 78f(b)(7).

defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, and by making the Exchange's membership process less burdensome for Applicants and Members, the Exchange will improve its competitive standing relative to other exchanges.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>35</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>34</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

Rule 19b-4(f)(6)(iii),<sup>36</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that the proposed changes are primarily intended to update and reorganize the Exchange's existing membership rules and processes. Further, the Exchange states these rules are intended to streamline and clarify processes and also eliminate unused and outdated provisions. The Exchange states the effect of these changes will make the membership process less burdensome for Applicants, Members, and Associated Persons while not limiting the Exchange's ability to appropriately scrutinize prospective and existing Members and Associated Persons. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>37</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2019-022 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2019-022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-022 and should be submitted on or before May 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-07050 Filed 4-9-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85512; File No. SR-MIAX-2019-17]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 4, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2019, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to amend its fees and rebates for Qualified Contingent Cross ("QCC") orders and Complex Qualified Contingent Cross ("cQCC") orders.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>36</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>37</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>38</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Sections 1(a)(vii) and (viii) of the Fee Schedule to amend its fees and rebates for QCC and cQCC Orders. A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.<sup>3</sup> Currently, the Exchange assesses a transaction fee for all types of market participants other than Priority Customer<sup>4</sup> for QCC Orders of \$0.15 per contract (Priority Customer orders are assessed a charge of \$0.00 per contract) for the Initiator and the Contra-side. In addition, the Exchange currently pays a \$0.10 per contract rebate for the initiating order, regardless of the type of market participant. The rebate is paid to the Member<sup>5</sup> that enters the order into the System<sup>6</sup>, but is only paid on the initiating side of the QCC transaction. No rebates are paid for QCC transactions in which both the initiator and contra-side orders are from Priority Customers. The Exchange notes that with regard to order entry, the first order submitted into the System is marked as the initiating side and the second order is marked as the contra side.

The Exchange now proposes to increase the Per Contract Fee for Contra-side QCC Orders for all types of market participants other than Priority Customer from \$0.15 to \$0.17 (Priority Customer orders will continue to be assessed a Per Contract Fee for Contra-side QCC Orders of \$0.00). The Exchange does not propose to change the Per Contract Fee for Initiator QCC Orders for any market participants. In addition, the Exchange proposes to

increase the Per Contract Rebate for Initiator QCC Orders for all types of market participants from \$0.10 per contract to \$0.14 per contract. The Exchange is not proposing to change that no rebates will be paid for QCC transactions for which both the Initiator and Contra-side orders are Priority Customers.

A cQCC Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell or buy an equal number of contracts.<sup>7</sup> Currently, the Exchange assesses a transaction fee for all types of market participants other than Priority Customer for cQCC Orders of \$0.15 per contract (Priority Customer orders are assessed a charge of \$0.00 per contract) for the Initiator and the Contra-side. In addition, the Exchange currently pays a \$0.10 per contract rebate for the initiating order, regardless of the type of market participant. No rebates are paid for cQCC transactions in which both the initiator and contra-side orders are from Priority Customers. All fees and rebates are per contract per leg. The rebate is paid to the Member that enters the order into the System, but is only paid on the initiating side of the cQCC transaction.

The Exchange now proposes to increase the Per Contract Fee for Contra-side cQCC Orders for all types of market participants other than Priority Customer from \$0.15 to \$0.17 (Priority Customer orders will continue to be assessed a Per Contract Fee for Contra-side cQCC Orders of \$0.00). The Exchange does not propose to change the Per Contract Fee for Initiator cQCC Orders for any market participants. In addition, the Exchange proposes to increase the Per Contract Rebate for Initiator cQCC Orders for all types of market participants from \$0.10 per contract to \$0.14 per contract. The Exchange is not proposing to change that no rebates will be paid for cQCC transactions for which both the initiator and contra-side orders are Priority Customers.

The Exchange notes that QCC and cQCC Orders are excluded from: (i) The volume threshold calculations for the Market Maker Sliding Scale; (ii) the rebates and volume calculations as part of the Priority Customer Rebate Program; (iii) participation in the Professional Rebate Program; and (iv) the Marketing Fee that is assessed to Market Makers in their assigned classes in simple or complex order executions

when the contra-party to the execution is a Priority Customer.

The purpose of increasing the specified QCC and cQCC Order fees and rebates is for business and competitive reasons. The Exchange believes that it is appropriate to adjust these specified QCC and cQCC Order fees and rebates in order to attract additional QCC and cQCC order flow and grow its market share in this segment, through offering a higher rebate (than the Exchange currently offers) and fees that are consistent with other exchanges, effectively lowering the overall cost to Members executing these orders on the Exchange. The Exchange notes that other competing exchanges similarly provide rebates on QCC and cQCC initiating orders,<sup>8</sup> and similarly charge fees on QCC and cQCC on Contra-side orders.<sup>9</sup>

The proposed rule change is to become operative April 1, 2019.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in that it is designed to promote just and equitable principles of trade, to remove

<sup>8</sup> See BOX Fee Schedule, Section I(D)(1) (a \$0.14 per contract rebate will be applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer); see also Cboe Fee Schedule, "QCC Rate Table," Page 5 (a \$0.10 per contract credit will be delivered to the TPH Firm that enters the order into Cboe Command but will only be paid on the initiating side of the QCC transaction); see also NYSE American Options Fee Schedule, Section I.F (a \$0.07 credit is applied to Floor Brokers executing 300,000 or fewer contracts in a month and a \$0.10 credit is applied to Floor Brokers executing more than 300,000 contracts in a month); see also Nasdaq ISE Pricing Schedule, Options 7, Section 6, Other Options Fees and Rebate, A. QCC and Solicitation Rebate (rebates range from \$0.00 to \$0.11 per contract).

<sup>9</sup> See BOX Options Market LLC ("BOX") Fee Schedule, Section I(D) (BOX does not charge Public Customers but charges Professional Customers, Broker-Dealers and Market Makers \$0.17 per contract on both Agency and Contra Orders); see also Cboe Exchange, Inc. ("Cboe") Fee Schedule, "QCC Rate Table," Page 5 (Cboe charges non-Public Customers \$0.17 per contract and does not charge Public Customers); see also NYSE American Options Fee Schedule, Section I.F (NYSE American charges Non-Customers \$0.20 per contract, Specialists and e-Specialists \$0.13 per contract, and does not charge Customer and Professional Customers).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretation and Policy .01 to Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. See Exchange Rule 516(j).

<sup>4</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). See Exchange Rule 100.

<sup>5</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>6</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>7</sup> See Exchange Rule 518(b)(6).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes its proposal to increase the Per Contract Fee for Contra-side QCC and cQCC Orders is reasonable, equitable and not unfairly discriminatory because, at the same time, the Exchange is proposing to increase the Per Contract Rebate for Initiator QCC and cQCC Orders for all types of market participants, effectively resulting in a lower, all-in execution cost for Members for these orders. The Exchange believes that the proposed fee and rebate changes are reasonable, equitable, and not unfairly discriminatory because the proposed fees and rebates are intended to attract additional QCC and cQCC Order flow, grow the Exchange's market share in this segment by effectively reducing the all-in execution cost for these orders to the benefit of all market participants.

Additionally, the Exchange believes that the proposed increase to the Per Contract Fee for Contra-side QCC and cQCC Orders is not unfairly discriminatory because the proposed fees would be charged to all market participants other than Priority Customers. Assessing QCC and cQCC Order rates to all market participants other than Priority Customer is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. By assessing a \$0.00 fee for Priority Customer orders, the Exchange believes the proposed QCC and cQCC Order fees will not discourage the sending of Priority Customer orders. The Exchange believes the proposed increase to the Per Contract Fee for Contra-side QCC and cQCC Orders for all types of market participants is reasonable because the proposed amount is in line with the amount assessed at other Exchanges for similar transactions.<sup>13</sup>

The Exchange believes the proposed increase to the Per Contract Rebate for Initiator QCC and cQCC Orders for all

types of market participants is reasonable because the rebate will offset the fee resulting in a lower all-in execution cost for Members for these orders, even with the proposed increase to the Per Contract Fee for Contra-side QCC and cQCC Orders. Further, other competing exchanges also provide rebates on the initiating order side and the proposed rebate amount is within the range of the rebate amounts at the other competing exchanges.<sup>14</sup> The Exchange believes the proposed increase to the rebate is equitable and not unfairly discriminatory because it applies to all Members that enter the initiating order (except for when both the initiator and contra-side orders are Priority Customers) and because it is intended to incentivize the sending of more QCC and cQCC Orders to the Exchange. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to not provide a rebate for the Initiator for QCC and cQCC Orders for which both the Initiator and the Contra-side are Priority Customers since Priority Customers are already incentivized by being assessed a fee of \$0.00 for submitting QCC and cQCC Orders.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change applies to all Members. The Exchange believes this proposal will not cause an unnecessary burden on intermarket competition because the proposed changes will actually enhance the competitiveness of the Exchange relative to other exchanges which offer comparable fees and rebates for QCC and cQCC Orders. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become market participants on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner

that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>15</sup> and Rule 19b-4(f)(2)<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-17 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2019-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>13</sup> See *supra* note 9.

<sup>14</sup> See *supra* note 8.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2019-17, and should be submitted on or before May 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2019-07049 Filed 4-9-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2018-0071]

### Privacy Act of 1974; System of Records; Extension of Comment Period

**AGENCY:** Deputy Commissioner of Operations, Social Security Administration (SSA).

**ACTION:** Notice of a new system of records.

**SUMMARY:** We are extending the comment period for a previously published Notice of a new system of records, due to the inability of the public to comment from the day the notice published on March 13, 2019, until March 25, 2019. Accordingly, we are extending the comment period by 12 days for the new system of records entitled, Travel and Border Crossing Records (60-0389).

**DATES:** The comment period for the notice published March 13, 2019, at 84

FR 9195, is extended. Comments should be received on or before April 24, 2019.

**ADDRESSES:** The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401, West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, or through the Federal e-Rulemaking Portal at <http://www.regulations.gov>, please reference docket number SSA-2018-0071. All comments we receive will be available for public inspection at the above address and we will post them to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Navdeep Sarai, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401, West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 965-2997, email: [Navdeep.Sarai@ssa.gov](mailto:Navdeep.Sarai@ssa.gov).

**SUPPLEMENTARY INFORMATION:** This notice extends the public comment period 12 additional days for the new system of record notice, published on March 13, 2019, the Travel and Border Crossing system to collect information about applicants, beneficiaries, and recipients under Titles II, XVI, and XVIII who have had absences from the United States (U.S.). (84 FR 9195). The extended comment period closes April 24, 2019.

**Mary Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

[FR Doc. 2019-06907 Filed 4-9-19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF STATE

[Public Notice: 10729]

### Advisory Committee On International Economic Policy: Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:00 until 4:00 p.m., on Thursday, May 9 in Washington DC at the State Department, 320 21st Street NW. The meeting will be hosted by the Assistant Secretary of State for Economic and Business Affairs, Manisha Singh, and Committee Chair Paul R. Charron. The ACIEP serves the U.S. government in a solely advisory capacity, and provides advice concerning topics in international

economic policy. The discussion at the meeting will include topics such as women's economic empowerment, emerging technologies, data flows, and data privacy. The Sanctions Subcommittee as well as the Stakeholder Advisory Board might present updates.

This meeting is open to the public, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry, members of the public planning to attend must, no later than April 25, provide their full name and professional affiliation (if any) to Melike Yetken by email: [YetkenMA@state.gov](mailto:YetkenMA@state.gov). Requests for reasonable accommodation should also be made to Melike Yetken before April 25. Requests made after that date will be considered, but might not be possible to fulfill.

This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Protocol Records (State-33) and Security Records (State-36). See <https://www.state.gov/privacy/sorns/index.htm>. Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event.

For additional information, contact Melike Ann Yetken, Bureau of Economic and Business Affairs, at (202) 647-1817, or [YetkenMA@state.gov](mailto:YetkenMA@state.gov).

**Melike A. Yetken,**

*Designated Federal Officer, U.S. Department of State.*

[FR Doc. 2019-07026 Filed 4-9-19; 8:45 am]

**BILLING CODE 4710-07-P**

## DEPARTMENT OF STATE

[Public Notice: 10730]

### Additional Designation Pursuant to E.O.

**AGENCY:** Department of State.

**ACTION:** Designation of One Iranian Individual Pursuant to Executive Order (E.O.) 13382.

**SUMMARY:** Pursuant to the authority in section 1(ii) of Executive Order 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters", the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Reza Ebrahimi engaged,

<sup>17</sup> 17 CFR 200.30-3(a)(12).

or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

**DATES:** The designation by the Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on March 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, Philip A. Foley at tel.: 202-647-5193.

### Background

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the

Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the designee is as follows: Reza Ebrahimi, AKA: Mohammad Ebrahimi. *Date of Birth:* March 21, 1973. *Place of Birth:* Tehran, Iran.

Dated: March 20, 2019.

**Andrea Thompson,**

*Under Secretary for Arms Control and International Security, Department of State.*

[FR Doc. 2019-07105 Filed 4-9-19; 8:45 am]

**BILLING CODE 4710-27-P**

## DEPARTMENT OF STATE

[Public Notice: 10727]

### Determination Pursuant to Section 451 of the Foreign Assistance Act for the Use of Funds To Support South Sudan

Pursuant to section 451 of the Foreign Assistance Act of 1961 (the "Act") (22 U.S.C. 2261), section 1-100(a)(1) of Executive Order 12163 and Delegation of Authority 245-2, I hereby authorize, notwithstanding any other provision of law, the use of up to \$25,000,000 made available to carry out provisions of the Act (other than the provisions of chapter 1 of part I of the Act), to provide assistance authorized by part I of the Act to support the reconstituted Joint Monitoring and Evaluation Commission (RJMEC) and Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) as well as support for mediation efforts to forestall and resolve conflict that may arise between the parties to the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS); efforts to demobilize and prevent the recruitment of child soldiers in South Sudan; and efforts that support the management, oversight, and monitoring and evaluation of the South Sudan Peacekeeping Operations program.

This Determination and the accompanying Memorandum of Justification shall be promptly reported to the Congress. This Determination shall be published in the **Federal Register**.

Dated: March 27, 2019.

**John J. Sullivan,**

*Deputy Secretary of State.*

[FR Doc. 2019-07107 Filed 4-9-19; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Availability for the Draft Written Re-Evaluation (DWR) of the Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) for the Proposed Airport, Angoon, Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Availability (NOA) of Comment Period.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) regulations the FAA issues this notice to advise the public that a DWR of the ROD and FEIS for the proposed airport in Angoon has been prepared and is available for public review and comment for (see below).

**DATES:** The comment period opens on April 10, 2019 and closes May 10, 2019.

**ADDRESSES:** Copies of the DWR are available at the following locations:

1. Online at [http://dot.alaska.gov/sereg/projects/angoon\\_airport\\_new/index.shtml](http://dot.alaska.gov/sereg/projects/angoon_airport_new/index.shtml)
2. Juneau Public Library
  - Downtown Branch, 292 Marine Way, Juneau, AK 99801
  - Douglas Branch, 1016 3rd Street, Douglas, AK 99824
  - Mendenhall Mall Branch, 9109 Mendenhall Mall Rd, Juneau, AK 99801
3. Angoon Community Association Building, 315 Heendae Rd, Angoon, AK 99820
4. Angoon City Government Office, 700 Aan Deina Aat Street, Angoon, AK 99820
5. The FAA, Airports Division. Please contact Venus Larson at (907) 271-3813 for a copy

You may submit comments or request more information by any of the following methods:

1. *Email:* [katherine.wood@hdrinc.com](mailto:katherine.wood@hdrinc.com)



2. *U.S. Mail:* David Pyeatt, PE, Project Manager, DOT&PF Southcoast Region, P.O. Box 112506, Juneau, AK 99811–2506.

3. *In person:* To drop off comments, contact David Pyeatt, PE at (907) 465–4490.

Comments from interested parties on the DWR are encouraged during the 30-day period following the date of this NOA.

The FAA encourages all interested parties to provide comments concerning the scope and content of the DWR. Comments should be as specific as possible and address the analysis contained in the DWR. Reviewers may use quotations and other specific references to the text of the DWR to make the agency aware of the commenter's concerns. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

**FOR FURTHER INFORMATION CONTACT:**

Venus Larson, AAL–624, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W 7th Avenue Box #14, Anchorage, AK 99513. Ms. Venus Larson may be contacted during business hours at (907) 271–3813 (telephone) and (907) 271–2851 (fax), or by email at [Venus.Larson@faa.gov](mailto:Venus.Larson@faa.gov).

**SUPPLEMENTARY INFORMATION:** [http://dot.alaska.gov/sereg/projects/angoon\\_airport\\_new/index.shtml](http://dot.alaska.gov/sereg/projects/angoon_airport_new/index.shtml).

Issued in Anchorage, Alaska.

**Kristi A. Warden,**

*Acting Director, Airports Division, AAL–600.*

[FR Doc. 2019–06887 Filed 4–9–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2019–0032]

#### Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 2, 2019, Spark Training Solutions (XSPK), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 243, Training, Qualification, and Oversight for Safety-Related Railroad Employees. FRA assigned the petition Docket Number FRA–2019–0032.

XSPK is a Training Organization/ Learning Institution and is a small business which uses a third-party

vendor to provide Learning Management System service for itself and its clients. XSPK states it has not been able to find any affordable software or vendor with the ability to provide on-demand reporting of changes to training records as required by § 243.203(e)(3). XSPK proposes an alternate solution that it contends effectively provides an equivalent level of security of amended training records required by the regulation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these

comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Deputy Associate Administrator for Railroad Safety.*

[FR Doc. 2019–07138 Filed 4–9–19; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2019–0027]

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated March 21, 2019, Appalachian and Ohio Railroad, Inc. (A&O) and CSX Transportation (CSXT) jointly petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2019–0027.

##### *Applicants:*

Appalachian and Ohio Railroad, Inc., Mr. J. Thomas Garrett, President, 200 Clark Street, Paducah, KY 42003  
CSX Transportation, Mr. Carl A. Walker, Chief Engineer, Communications and Signals, 500 Water Street, Speed Code J–350, Jacksonville, FL 32202

A&O and CSXT request approval to discontinue the traffic control system (TCS) on trackage leased from owner CSXT, on the A&O Cowen District Main Line from control point (CP) Berkeley Run Junction Milepost (MP) BUC 0.0, Grafton WV, to CP Hampton Junction MP BUC 42.1, Buckhannon, WV. CSXT currently dispatches and provides maintenance of the TCS.

A&O states the reasons for the proposed changes are that traffic volumes do not warrant TCS and the current signal system is obsolete and replacement components are difficult to obtain or unavailable from vendors.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's



(DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Website:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• **Fax:** 202-493-2251.

• **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.

• **Hand Delivery:** 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**  
Deputy Associate Administrator, Office of Railroad Safety.

[FR Doc. 2019-07139 Filed 4-9-19; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2019-0029]

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document received March 27, 2019, Lake Superior and Ishpeming Railroad (LSIR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA-2019-0029.

**Applicant:** Lake Superior and Ishpeming Railroad, Mr. Jesse Zimmerman, Supervisor Track, Structures, Signals, 311 M-35, Negaunee, MI 49866.

The LSIR requests approval to replace power-operated switches at control point (CP) Empire Mine, Milepost (MP) Q70.78, and CP Tilden Junction, MP Q71.23 on the Ore Subdivision, with hand-operated switches lined and locked for Main Line movements. Two switch point indicators will also be removed.

LSIR states the reason for the proposed change is the idling of the Empire Mine property that these switches serve. The Canadian National (CN) was using these switches as they had been the main carrier shipping out of the Empire Mine. Now that the Empire Mine is idled, CN no longer enters the property through these switches.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Website:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• **Fax:** 202-493-2251.

• **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.

• **Hand Delivery:** 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.regulations.gov/privacy](http://www.regulations.gov/privacy). See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

Deputy Associate Administrator for Railroad Safety.

[FR Doc. 2019-07140 Filed 4-9-19; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2018-0100; Notice No. 2019-03]

#### Hazardous Materials: Emergency Waiver No. 13

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of emergency waiver order.

**SUMMARY:** PHMSA is issuing an emergency waiver order to persons

conducting operations under the direction of Environmental Protection Agency (EPA) Region 7 or United States Coast Guard (USCG) Eighth District within the Nebraska and Iowa disaster area. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from the Nebraska and Iowa disasters. This Waiver Order is effective immediately and shall remain in effect for 60 days from the date of issuance.

**FOR FURTHER INFORMATION CONTACT:**

Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366-4400.

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of 49 U.S.C. 5103(c), the Administrator for PHMSA hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171-180) to persons conducting operations under the direction of EPA Region 7 or USCG Eighth District within the Nebraska and Iowa disaster areas. The Waiver is granted to support the EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from the Nebraska and Iowa disasters.

On March 21, 2019, the President issued an Emergency Declaration for the Nebraska Severe Winter Storm, Straight-line Winds, And Flooding (DR-4420) for the counties of Banner, Box Butte, Butler, Cass, Cuming, Dodge, Douglas, Fillmore, Gage, Jefferson, Morrill, Polk, Sarpy, Saunders, Sheridan, Sioux, Thurston, and Wayne. On March 23, 2019, the President issued an Emergency Declaration for Iowa Severe Storms and Flooding (DR-4421) for the counties of Adair, Allamakee, Audubon, Boone, Bremer, Buena Vista, Butler, Calhoun, Carroll, Cass, Cherokee, Clay, Crawford, Dallas, Decatur, Dickinson, Emmet, Fayette, Franklin, Fremont, Greene, Guthrie, Hamilton, Hancock, Hardin, Harrison, Howard, Humboldt, Ida, Iowa, Jasper, Kossuth, Lyon, Madison, Mahaska, Marshall, Mills, Monona, Montgomery, O'Brien, Osceola, Page, Plymouth, Pocahontas, Polk, Pottawattamie, Sac, Shelby, Sioux, Tama, Union, Webster, Winnebago, Winneshiek, Woodbury, and Wright.

This Waiver Order covers all areas identified in the declaration, as amended. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) In the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by the Nebraska and Iowa disasters, PHMSA's Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while the EPA and USCG execute their recovery and cleanup efforts in the disaster areas. Specifically, PHMSA's Administrator finds that issuing this Waiver Order will allow the EPA and USCG to conduct their Emergency Support Function #10 response activities under the National Response Framework to safely remove, transport, and dispose of hazardous materials. By execution of this Waiver Order, persons conducting operations under the direction of EPA Region 7 or USCG Eighth District within the Nebraska and Iowa disaster areas are authorized to offer and transport non-radioactive hazardous materials under alternative safety requirements imposed by EPA Region 7 or USCG Eighth District when compliance with the HMR is not practicable. Under this Waiver Order, non-radioactive hazardous materials may be transported to staging areas within 50 miles of the point of origin. Further transportation of the hazardous materials from staging areas must be in full compliance with the HMR.

This Waiver Order is effective immediately and shall remain in effect for 60 days from the date of issuance.

Issued in Washington, DC, on March 29, 2019.

**Howard R. Elliott,**

*Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2019-07088 Filed 4-9-19; 8:45 am]

**BILLING CODE 4919-60-P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0747]

**Agency Information Collection Activity Under OMB Review: Application for Disability Compensation and Related Compensation Benefits**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before May 10, 2019.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please refer to "OMB Control No. 2900-00747" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354 or email [danny.green2@va.gov](mailto:danny.green2@va.gov). Please refer to "OMB Control No. 2900-0747" in any correspondence.

**SUPPLEMENTARY INFORMATION:** *Authority:* 44 U.S.C. 3501-21.

*Title:* Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

*OMB Control Number:* 2900-0747.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 21-526EZ is used to collect the information needed to process a fully developed claim for disability compensation and/or related compensation benefits. Though the law requires the claimant submit a certification in writing that states no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated via the fully developed claim program, it

has further evolved into a standard claim form to be used for any benefit associated with disability compensation; to include new or initial claims, reopened claims, and claims for increase. Due to the receipt of; new or initial claims, reopened and increased claims, and general program changes, such as regulatory changes and the discontinuance of other claims forms, VA Form 21-526EZ is being resubmitted to correct the estimate of burden. No other changes are proposed. This is a burden estimate change only.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 224 on November 20, 2018, pages 58690 and 58691.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 498,667 hours.

*Estimated Average Burden per Respondent:* 22 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 1,360,000.

By direction of the Secretary.

**Danny S. Green,**

*VA Interim Clearance Officer, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs.*

[FR Doc. 2019-07106 Filed 4-9-19; 8:45 am]

**BILLING CODE 8320-01-P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **National Research Advisory Council; Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the National Research Advisory Council will hold a meeting on Wednesday, June 5, 2019, at 810 Vermont Avenue NW, Room 730, Washington, DC 20420. The meeting will convene at 9:00 a.m. and end at 3:30 p.m. This meeting is open to the public.

The purpose of the National Research Advisory Council is to advise the Secretary on research development conducted by the Veterans Health Administration, including policies and programs targeting the high priority of Veterans' health care needs.

The agenda will include updates from Department of Defense/Veterans Affairs Electronic Health Records Modernization, Health Sciences Research and Development, Service Directors, and visit from VA Leadership. No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Avery Rock, Designated Federal Officer, Office of Research and Development (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 461-9760, or by email at [Avery.Rock@va.gov](mailto:Avery.Rock@va.gov) no later than close of business on

May 29, 2019. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Any member of the public seeking additional information should contact Avery Rock at the above phone number or email address noted above.

Dated: April 4, 2019.

**LaTonya L. Small,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2019-07036 Filed 4-9-19; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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## Part II

### Securities and Exchange Commission

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17 CFR Parts 229, 230 et al.

Securities Offering Reform for Closed-End Investment Companies;  
Proposed Rule

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, 249, 270, and 274

[Release Nos. 33–10619; 34–85382; IC–33427; File No. S7–03–19]

RIN 3235–AM31

### Securities Offering Reform for Closed-End Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (the “Commission”) is proposing rules that would modify the registration, communications, and offering processes for business development companies (“BDCs”) and other closed-end investment companies under the Securities Act of 1933. As directed by Congress, we are proposing rules that would allow these investment companies to use the securities offering rules that are already available to operating companies. The proposed rules would extend to closed-end investment companies offering reforms currently available to operating company issuers by expanding the definition of “well-known seasoned issuer” to allow these investment companies to qualify; streamlining the registration process for these investment companies, including the process for shelf registration; permitting these investment companies to satisfy their final prospectus delivery requirements by filing the prospectus with the Commission; and permitting additional communications by and about these investment companies during a registered public offering. In addition, the proposed rules would include amendments to our rules and forms

intended to tailor the disclosure and regulatory framework to these investment companies. The proposed rules also include a modernized approach to securities registration fee payment that would require closed-end investment companies that operate as “interval funds” to pay securities registration fees using the same method that mutual funds use today. Lastly, we are proposing certain structured data reporting requirements, including the use of structured data format for filings on the form providing annual notice of securities sold pursuant to the rule under the Investment Company Act of 1940 that prescribes the method by which certain investment companies (including mutual funds) calculate and pay registration fees.

**DATES:** Comments should be received by June 10, 2019.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment forms (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–03–19 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File Number S7–03–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<http://www.sec.gov/rules/proposed.shtml>).

Comments also are available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Asaf Barouk, Attorney-Adviser; J. Matthew DeLesDernier, Senior Counsel; Sean Harrison, Senior Counsel; Amy Miller, Senior Counsel; Angela Mokodean, Senior Counsel; Jacob D. Krawitz, Branch Chief; David J. Marcinkus, Branch Chief; Amanda Hollander Wagner, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office; Christian T. Sandoe, Assistant Director or Michael J. Spratt, Assistant Director, at (202) 551–6921, Disclosure Review and Accounting Office; Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for public comment amendments to:

Commission reference	CFR citation (17 CFR)
Securities Act of 1933 (“Securities Act”) <sup>1</sup>	<ul style="list-style-type: none"> <li>Rule 134 ..... § 230.134.</li> <li>Rule 138 ..... § 230.138.</li> <li>Rule 139 ..... § 230.139.</li> <li>Rule 156 ..... § 230.156.</li> <li>Rule 163 ..... § 230.163.</li> <li>Rule 163A ..... § 230.163A.</li> <li>Rule 164 ..... § 230.164.</li> <li>Rule 168 ..... § 230.168.</li> <li>Rule 169 ..... § 230.169.</li> <li>Rule 172 ..... § 230.172.</li> <li>Rule 173 ..... § 230.173.</li> <li>Rule 405 ..... § 230.405.</li> <li>Rule 415 ..... § 230.415.</li> <li>Rule 418 ..... § 230.418.</li> <li>Rule 424 ..... § 230.424.</li> <li>Rule 430B ..... § 230.430B.</li> <li>Rule 433 ..... § 230.433.</li> <li>Rule 462 ..... § 230.462.</li> <li>Rule 497 ..... § 230.497.</li> </ul>

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 15 U.S.C. 80a–1 *et seq.*

Commission reference		
Securities Exchange Act of 1934 (“Exchange Act”) <sup>2</sup>	Rule 13a–11	§ 240.13a–11.
	Rule 15d–11	§ 240.15d–11.
	Form 8–K	§ 249.308.
Investment Company Act of 1940 (“Investment Company Act”) <sup>3</sup>	Rule 8b–16	§ 270.8b–16.
	Rule 23c–3	§ 270.23c–3.
	Rule 24f–2	§ 270.24f–2.
	Form 24F–2	§ 274.24.
Securities Act and Investment Company Act	Form N–2	§ 239.14 and § 274.11a–1.

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## I. Introduction

We are proposing rules that would modify the registration, communications, and offering processes for business development companies (“BDCs”) and registered closed-end investment companies (“registered CEFs”) and, collectively with BDCs, “affected funds”) under the Securities Act.<sup>4</sup> In 2005, the Commission adopted

<sup>4</sup> BDCs are a category of closed-end investment companies that do not register under the Investment Company Act, but rather elect to be subject to the provisions of sections 55 through 65 of the Investment Company Act. See section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)]. Congress established BDCs for the purpose of making capital more readily available to small, developing and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing.

securities offering reforms for operating companies to modernize the securities offering and communication processes while maintaining the protection of investors under the Securities Act.<sup>5</sup> At that time, the Commission specifically excluded all investment companies—including affected funds—from the scope of the reforms.<sup>6</sup> Now, as directed by Congress, we are proposing rules that would allow affected funds to use the securities offering rules that are already available to operating companies.<sup>7</sup>

The Small Business Credit Availability Act (the “BDC Act”) directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act.<sup>8</sup> As discussed in detail below, the BDC Act identifies with specificity the required revisions.<sup>9</sup> The Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Registered CEF Act”) (and, together with the BDC Act, the “Acts”) directs us to finalize rules to allow any registered CEF that is listed on a national

See H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980).

<sup>5</sup> Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44721 (Aug. 3, 2005)] (“Securities Offering Reform Adopting Release”). In this release we generally use the term “operating company” to refer to issuers that are not investment companies and that are currently eligible to rely on the rules we are proposing to amend.

<sup>6</sup> See, e.g., *id.* at 44727 (discussing the exclusion of investment companies registered under the Investment Company Act and BDCs from the definition of “well-known seasoned issuer”); *id.* at 44735 (discussing the exclusion of such companies from safe harbors for factual business information and forward-looking information); *id.* at 44784 (discussing the exclusion of such companies from final prospectus delivery reforms).

<sup>7</sup> See Part II.A *infra* concerning the definition of “affected funds.”

<sup>8</sup> Section 803(b) of Small Business Credit Availability Act, Public Law 115–141, 132 Stat. 348 (2018) (“BDC Act”). This section also directs us to make specified revisions to allow a BDC to use the proxy rules that are available to such other issuers. *Id.* Affected funds generally use the proxy rules that are available to operating companies already. One current difference applicable to these entities, however, is a more limited ability to incorporate information into their proxy statements by reference. The BDC Act directs that we eliminate this difference by providing these entities parity with operating companies. Section 803(b)(2)(N) of the BDC Act; see also *infra* Part II.F.2.

<sup>9</sup> See section 803(b)(2) of BDC Act.

securities exchange (a “listed registered CEF”) or that makes periodic repurchase offers under rule 23c–3 under the Investment Company Act (“rule 23c–3”) <sup>10</sup> (an “interval fund”) to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.<sup>11</sup> Unlike the BDC Act, the Registered CEF Act does not identify with specificity the revisions that are required.

The proposed rules would institute a number of reforms:

- First, they would streamline the registration process to allow eligible affected funds to use a short-form shelf registration statement to sell securities “off the shelf” more quickly and efficiently in response to market opportunities.
- Second, the proposed rules would allow affected funds to qualify as “well-known seasoned issuers” (“WKSI”) under rule 405 under the Securities Act.

- Third, they would allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies.
- Fourth, they would allow affected funds to use communications rules currently available to operating companies, such as the use of certain factual business information, forward-looking information, a “free writing prospectus,” and broker-dealer research reports.
- Finally, they would tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules applicable to them. These proposed amendments include structured data requirements to make it easier for investors and others to analyze fund data; new annual report disclosure requirements to provide key information in annual reports; a new requirement for registered CEFs to file reports on Form 8–K in a manner similar to operating companies and BDCs, including new Form 8–K items tailored to registered

CEFs and BDCs; and a proposal to require interval funds to pay securities registration fees using the same method that mutual funds and exchange-traded funds (“ETFs”) use today.

As discussed in detail below, the proposed rules would affect categories of affected funds differently just as categories of operating companies are treated differently under these rules currently. For example, some of the rules would apply to all affected funds, that is, all BDCs and registered CEFs. Many of the proposed rules, however, would apply only to “seasoned funds.” These are affected funds that are current and timely in their reporting and therefore generally eligible to file a short-form registration statement under the proposal if they have at least \$75 million in “public float.” <sup>12</sup> Some of the proposed rules would apply only to seasoned funds that also qualify as WKSI, that is, seasoned funds that generally have at least \$700 million in public float. Table 1 summarizes these different impacts.

TABLE 1

Rule	Summary description of rule	Entities affected by proposed changes	Discussed below in
<b>REGISTRATION PROVISIONS</b>			
Securities Act Rule 415.	Permits registration of securities to be offered on a delayed or a continuous basis.	Seasoned Funds* ...	Parts II.B.1–II.B.2.a.
Proposed General Instructions A.2 and F.3 of Form N–2.	Provide for backward and forward incorporation by reference .....	Seasoned Funds .....	Part II.B.2.a.
Proposed General Instruction F.4.a.	Requires online posting of information incorporated by reference .....	Affected Funds .....	Part II.H.4.
Securities Act Rule 430B.	Permits certain issuers to omit certain information from their “base” prospectuses and update the registration statement after effectiveness.	Seasoned Funds .....	Part II.B.2.b.
Securities Act Rules 424 and 497.	Provide the processes for filing prospectus supplements .....	Affected Funds .....	Part II.B.2.b.
Securities Act Rule 462.	Provides for effectiveness of registration statements immediately upon filing with the Commission.	WKSI .....	Part II.B.2.a.
Securities Act Rule 418.	Exempts some registrants from an obligation to furnish certain engineering, management, or similar reports.	Seasoned Funds .....	Part II.F.1.
Investment Company Act Rule 22c–3.	Subjects interval funds to the registration fee payment system based on annual net sales.	Interval Funds .....	Part II.G.
<b>COMMUNICATIONS PROVISIONS</b>			
Securities Act Rule 134.	Permits issuers to publish factual information about the issuer or the offering, including “tombstone ads”.	Affected Funds .....	Part II.E.1.
Securities Act Rule 163A.	Permits issuers to communicate without risk of violating the gun-jumping provisions until 30 days prior to filing a registration statement.	Affected Funds .....	Part II.E.1.
Securities Act Rules 168 and 169.	Permit the publication and dissemination of regularly released factual and forward-looking information.	Affected Funds .....	Part II.E.1.
Securities Act Rules 164 and 433.	Permit use of a “free writing prospectus” .....	Affected Funds .....	Part II.E.1.

<sup>10</sup> 17 CFR 270.23c–3.

<sup>11</sup> Section 509(a) of Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018) (“Registered CEF Act”). The Registered CEF Act also refers to proxy rules, as does the BDC Act. See *supra* footnote 8.

<sup>12</sup> See *infra* footnote 18. Form S–3 defines an issuer’s “aggregate market value,” commonly referred to as “public float,” as the “aggregate market value of the voting and non-voting common equity held by non-affiliates.” See General Instruction I.B.1 of Form S–3. The determination of

public float is based on a public trading market, such as an exchange or certain over-the-counter markets. See Securities Offering Reform Adopting Release, *supra* footnote 5, at n.50.

TABLE 1—Continued

Rule	Summary description of rule	Entities affected by proposed changes	Discussed below in
Securities Act Rule 163.	Permits oral and written communications by WKSIs at any time .....	WKSIs .....	Part II.E.1.
Securities Act Rule 138.	Permits a broker or dealer to publish or distribute certain research about securities other than those they are distributing.	Seasoned Funds .....	Part II.E.2.
<b>PROXY STATEMENT PROVISION</b>			
Item 13 of Schedule 14A.	Permits certain registrants to use incorporation by reference to provide information that otherwise must be furnished with certain types of proxy statements.	Seasoned Funds .....	Part II.F.2.
<b>PROSPECTUS DELIVERY PROVISIONS</b>			
Securities Act Rules 172 and 173.	Permit issuers, brokers, and dealers to satisfy final prospectus delivery obligations if certain conditions are satisfied.	Affected Funds .....	Part II.D.
<b>STRUCTURED DATA REPORTING PROVISIONS</b>			
Structured Financial Statement Data.	A requirement that BDCs tag their financial statements using Inline eXtensible Business Reporting Language ("Inline XBRL") format.	BDCs .....	Part II.H.1.a.
Prospectus Structured Data Requirements.	A requirement that registrants tag certain information required by Form N-2 using Inline XBRL.	Affected Funds .....	Parts II.H.1.b–II.H.1.c.
Form 24F-2 Structured Format.	A requirement that filings on Form 24F-2 be submitted in a structured format	Form 24F-2 Filers ..	Part II.H.1.d.
<b>PERIODIC REPORTING PROVISIONS</b>			
Investment Company Act Rule 8b-16.	A requirement that funds that rely on the rule disclose certain enumerated changes in the annual report in enough detail to allow investors to understand each change and how it may affect the fund.	Registered CEFs .....	Part II.H.5.
Proposed Item 24.4.h(2) of Form N-2.	A requirement for information about the investor's costs and expenses in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.h(3) of Form N-2 .....	A requirement for information about the share price of the registrant's stock and any premium or discount in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.h(1) of Form N-2.	A requirement for information about each of a fund's classes of senior securities in the registrant's annual report.	Seasoned Funds .....	Part II.H.2.a.
Proposed Item 24.4.g of Form N-2.	A requirement for narrative disclosure about the fund's performance in the fund's annual report.	Registered CEFs .....	Part II.H.2.b.
Item 4 of Form N-2	Requires disclosure of certain financial information .....	BDCs .....	Part II.H.2.c.
Proposed Item 24.4.h(4) of Form N-2.	A requirement to disclose outstanding material staff comments that remain unresolved for a substantial period of time.	Seasoned Funds .....	Part II.H.2.d.
<b>CURRENT REPORT PROVISIONS</b>			
Exchange Act Rules 13a-11 and 15d-11.	Require registered CEFs to file current reports on Form 8-K .....	Registered CEFs .....	Part II.H.3.a.
Proposed Section 10 of Form 8-K.	Requires current reporting of two new events specific to affected funds .....	Affected Funds .....	Part II.H.3.b.
Regulation FD Rule 103.	Provides that a failure to make a public disclosure required solely by rule 100 of Regulation FD will not disqualify a "seasoned" issuer from use of certain forms.	Seasoned Funds .....	Part II.H.3.d.

\* Some of the proposed rule changes that are shown above as affecting "seasoned funds" would only affect those seasoned funds that elect to file a registration statement on Form N-2 using a proposed instruction permitting funds to use the form to file a short-form registration statement.



## II. Discussion

### A. Scope of Closed-End Investment Companies Affected by the Proposed Rules

While the rulemaking mandate of the BDC Act applies to all BDCs, the mandate of the Registered CEF Act extends to most, but not all, registered CEFs.<sup>13</sup> Specifically, the BDC Act addresses both BDCs that are listed on an exchange and those that are not, while the Registered CEF Act extends to all registered CEFs that are listed on an exchange as well as interval funds, but excludes other unlisted funds. We propose to apply the proposed rules to all BDCs and registered CEFs, with certain conditions and exceptions discussed below and generally illustrated in Table 1 above.

Although the Registered CEF Act only requires us to allow interval funds and listed registered CEFs to use the securities offering rules available to operating companies, that Act does not preclude us from exercising our discretion to extend these rules to all registered CEFs. Except as noted below, we believe, for purposes of the relevant securities offering and communications rules, that unlisted registered CEFs are not distinguishable from unlisted BDCs, which the proposed rules must cover, and that unlisted registered CEFs would benefit from parity of treatment.

Although certain benefits of the rules we are proposing to amend are less likely to apply, by their existing terms, to unlisted issuers,<sup>14</sup> the scope of our proposed amendments would generally treat unlisted BDCs, unlisted registered CEFs, and unlisted operating companies in a consistent manner. We believe that this approach would benefit unlisted registered CEFs and their investors, including by providing new investor protections to investors in these funds. It also could avoid adverse consequences that could result from treating unlisted registered CEFs differently from all other registered CEFs and unlisted BDCs. For example, such disparate treatment could produce potential competitive disparities<sup>15</sup> and the possibility of anomalous results if an unlisted registered CEF were to list its shares and at that time become subject to different offering requirements. The proposal therefore would provide all BDCs and registered CEFs additional

flexibility in raising capital, subject to the conditions and associated investor protections included in the proposed rules. We recognize that despite this consistent treatment of affected funds, unlisted affected funds may not qualify to rely on all of the rules we propose to amend, by those rules' existing terms and conditions (for example, most interval funds). However, these funds still would be able to rely on many of the rules to gain additional flexibility in multiple aspects of the offering process.<sup>16</sup>

Although the BDC Act's requirements are more specific than those in the Registered CEF Act, we believe they both share the overall purpose of providing offering and communication rule parity to the investment companies covered by the Acts. In particular, both Acts direct that we make available to these investment companies the securities offering rules that are available to other issuers required to file reports under section 13 or 15(d) of the Exchange Act. The BDC Act *expressly* and *specifically* requires that we apply many of the proposed amendments to BDCs while the Registered CEF Act does not *expressly* and *specifically* identify the required revisions for registered CEFs, but the two Acts share similar broad mandates. We believe that, except where dictated by meaningful differences between BDCs and registered CEFs—or each type of entity's broader regulatory environment—consistent application of the proposed rules across affected funds would result in more efficient offering processes and more consistent investor protections. Accordingly, the proposed rules would generally apply the specific requirements of the BDC Act to both BDCs and registered CEFs, with certain conditions and exceptions discussed below.

We request comment on the proposed scope of affected funds.

- Is the proposed scope of affected funds appropriate?
- Should open-end registered investment companies be included in the scope of the affected funds? Why or why not? Should some open-end

registered investment companies but not others be included? If so, which ones and why?

- Should any investment companies be removed from the scope of affected funds? If so, which ones and why? Should the scope—or the scope of any of the individual aspects of the proposed rules—be narrowed to exclude registered CEFs that are neither interval funds nor listed registered CEFs?

- We also request comment as to whether each proposed amendment discussed throughout this release should include additional or fewer types of investment companies.

### B. Registration Process

We are proposing amendments to our rules and forms to permit affected funds to use the more flexible registration process currently available to operating companies. Specifically, the proposed amendments would allow affected funds to sell securities “off the shelf” more quickly and efficiently in response to market opportunities.

#### 1. Current Shelf Offering Process for Affected Funds

Issuers, including affected funds, that are eligible to register their securities offerings on Form S-3 may conduct primary offerings “off the shelf” under Securities Act rule 415(a)(1)(x), the provision for offerings made on a delayed or continuous basis.<sup>17</sup> In a rule 415(a)(1)(x) shelf offering, a seasoned issuer can register an unallocated dollar amount of securities for sale at a later time.<sup>18</sup> The issuer can then take down

<sup>17</sup> Primary offerings that are not continuous in nature may only be made on a delayed, or “shelf,” basis if they fit within one of the narrow sets of permissible delayed offerings in Rule 415(a)(1), including rule 415(a)(1)(x). In a continuous offering, an issuer must be ready and willing to sell the securities at all times. The issuer may not suspend and resume the offering. *See* Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies, Investment Company Act Release No. 19391 (Apr. 7, 1993) [58 FR 19361, 19362 (Apr. 14, 1993)]. An issuer also can rely on rule 415(a)(1)(x) to make an immediate offering.

<sup>18</sup> In this release we use the term “seasoned” to refer generally to an issuer that meets the registrant requirements in General Instruction I.A of Form S-3 and, when referring to seasoned funds, a fund that meets these Form S-3 registrant requirements as well as certain proposed modifications for registered CEFs. Among other things, General Instruction I.A requires that the registrant (1) has been subject to the reporting requirements of sections 12 or 15(d) of the Exchange Act and has filed all of the material required to be filed pursuant to sections 13, 14, or 15(d) of the Exchange Act for at least twelve calendar months immediately preceding the filing of the registration statement; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement (with specified Form 8-K exceptions). A foreign private issuer also can meet the registrant

<sup>13</sup> See section 509(a) of Registered CEF Act.

<sup>14</sup> For example, affected funds that do not list their securities on an exchange and do not have “public float”—such as most interval funds—would generally not qualify to be WKSIs or to file short-form registration statements. *See, e.g., infra* footnotes 35–37.

<sup>15</sup> See *infra* Part IV.B.1.

<sup>16</sup> For example, these funds would newly be able to satisfy final prospectus delivery obligations by filing a prospectus with the Commission under the conditions discussed in Part II.D *infra*, and the proposed rules also would significantly expand these funds' flexibility with respect to offering communications as discussed in Part II.E *infra*. These funds would also be subject to the other requirements we are proposing for affected funds, such as the requirement to provide reports on Form 8-K discussed in Part II.H.3 *infra*. We are also proposing a modernized approach to interval funds' payment of securities registration fees. *See infra* Part II.G.

securities “off the shelf” for sale in a public offering as market conditions warrant. This allows seasoned issuers to quickly access the public securities markets from time to time to take advantage of favorable market conditions.<sup>19</sup>

Affected funds currently can make shelf offerings under rule 415(a)(1)(x) if they meet the eligibility criteria for Form S-3, even though affected funds register their securities offerings on Form N-2.<sup>20</sup> Our rules for operating companies, however, are more flexible and efficient than for affected funds. In particular, seasoned operating companies can use a short-form registration statement on Form S-3. Certain seasoned operating companies also can rely on Securities Act rule 430B to omit certain information from the “base” prospectus when the registration statement becomes effective and later provide that information in a subsequent Exchange Act report incorporated by reference, a prospectus supplement, or a post-effective amendment.<sup>21</sup> The ability to “forward incorporate” information in Exchange Act reports filed *after* the registration statement becomes effective allows operating companies to efficiently update their prospectuses and access capital markets without the expense and delay of filing post-effective amendments in most cases.

Affected funds, on the other hand, currently have limited ability to incorporate information by reference

requirements of Form F-3, in lieu of Form S-3. We focus in this release on Form S-3 because a foreign investment company generally cannot make a public offering of its securities in the United States. *See* section 7(d) of the Investment Company Act [15 U.S.C. 80a-7(d)].

<sup>19</sup> Issuers that rely on rule 415(a)(1)(x) must file a new registration statement every three years, with unsold securities and unused fees carried forward to the new registration statement. *See* Securities Act rule 415(a)(5) [17 CFR 230.415(a)(5)]. If the new registration statement is an automatic shelf registration statement filed by a WKSI, it will be effective immediately upon filing.

<sup>20</sup> *See* Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3, Securities Act Release No. 8878 (Dec. 19, 2007) [72 FR 73534, 73537 n.36 (Dec. 27, 2007)] (“Rule 415(a)(1)(x) permits shelf offerings of securities ‘registered (or qualified to be registered)’ on Form S-3 or Form F-3. We note that a closed-end investment company, including a business development company . . . that meets the eligibility standards enumerated in Form S-3, as revised by new General Instruction I.B.6., may register its securities in reliance on Rule 415(a)(1)(x) notwithstanding the fact that closed-end funds register their securities on Form N-2 rather than Form S-3.” (emphasis added)). Affected funds also can currently conduct offerings under other provisions of rule 415(a)(1).

<sup>21</sup> The base prospectus of a shelf registration statement will generally describe in broad terms the types of securities and offerings that the issuer may conduct at some later time.

into their registration statements and cannot forward incorporate information from subsequently-filed Exchange Act reports.<sup>22</sup> When an affected fund sells securities, including as part of a “takedown off the shelf,” its registration statement must include all required information.<sup>23</sup> In particular, the affected fund’s registration statement must include current financial information, including any annual update required by section 10(a)(3) of the Securities Act.<sup>24</sup> Affected funds provide any section 10(a)(3) update to the registration statement by filing a post-effective amendment, which involves the expense and potential delay associated with the fund’s preparation of the amendment and our staff’s review and comment process.<sup>25</sup>

Affected funds also cannot currently rely on rule 430B, which allows certain issuers to omit information from a base

<sup>22</sup> Form N-2 permits registrants to “backward incorporate” financial information from a previously-filed report under limited circumstances: (1) A registered CEF can satisfy the requirements to provide financial highlights in the prospectus, and financial statements in the SAI, by incorporating this information by reference to a previously-filed annual or semi-annual report filed on Form N-CSR; and (2) a BDC may satisfy the requirement to provide similar financial and other information by reference to a previously-filed annual report on Form 10-K. *See* General Instruction F of Form N-2.

<sup>23</sup> The fund’s registration statement must include all required information to avoid liability from selling securities from an out-of-date prospectus and to satisfy section 10(a) of the Securities Act. *See infra* footnotes 67–68 and accompanying text.

<sup>24</sup> Section 10(a)(3) of the Securities Act provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use. 15 U.S.C. 77j. An affected fund registering an offering under rule 415 also must undertake to file a post-effective amendment to the registration statement: (1) To include any prospectus required by section 10(a)(3) of the Securities Act; (2) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and (3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement. *See* Item 34.4 of Form N-2.

<sup>25</sup> These post-effective amendments are filed pursuant to section 8(c) of the Securities Act and must be declared effective, typically by the staff acting pursuant to delegated authority. In contrast, under Form S-3, an issuer’s section 10(a)(3) update need not be made through a separate post-effective amendment. Rather, under that form, when the issuer files its annual report on Form 10-K containing the issuer’s audited financial statements for its most recently completed fiscal year by the due date of the annual report, it operates as a post-effective amendment to the registration statement for purposes of section 10(a)(3). *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.61.

prospectus, or the process that operating companies follow to file prospectus supplements.<sup>26</sup> In addition, affected funds cannot currently file automatic shelf registration statements because only WSIs can file these registration statements. These differences can result in additional expense or delay for affected funds relative to operating companies and can affect the timing of an affected fund’s capital raising.<sup>27</sup>

## 2. Proposed Amendments to the Registration Process for Affected Funds

Consistent with the BDC Act and the Registered CEF Act, we are proposing to provide affected funds parity with operating companies by permitting affected funds to:

- File a short-form registration statement on Form N-2 that will function like a Form S-3 registration statement. An affected fund eligible to file this short-form registration statement could use it to register shelf offerings, including shelf registration statements filed by WKSI affected funds that become effective automatically, and could satisfy Form N-2’s disclosure requirements by incorporating by reference information from the fund’s Exchange Act reports;
- Rely on rule 430B to omit information from their base prospectuses, and to use the process operating companies follow to file prospectus supplements; and
- Include additional information in periodic reports to update their registration statements, provided that this information is identified as being included for this purpose.

### a. Short-Form Registration on Form N-2

We are proposing a new instruction to Form N-2 to allow affected funds to file a short-form registration statement on Form N-2 that will function like a registration statement filed on Form

<sup>26</sup> Rule 430B is available for automatic shelf registration statements filed by WSIs and shelf registration statements filed by certain issuers eligible to use Form S-3 for a primary offering. Affected funds currently rely on Securities Act rule 430A and rule 430C, which do not permit an issuer to omit as much information as permitted under rule 430B.

<sup>27</sup> Affected funds in particular may want greater flexibility to control the timing of their capital raising because section 23(b) of the Investment Company Act generally prohibits a registered CEF from issuing its shares at a price below the fund’s current net asset value (“NAV”) without shareholder approval (and this provision applies to BDCs as well with certain modifications). 15 U.S.C. 80a-23(b); 15 U.S.C. 80a-62. Because the shares of affected funds often trade at a discount to NAV, these funds may want to quickly access the markets when their shares are trading at a premium. Selling securities “off the shelf” is one way to achieve such quick access.

S-3. We generally refer to this proposed instruction, General Instruction A.2, as the “short-form registration instruction” and funds relying on this instruction as filing a short-form registration statement on Form N-2.<sup>28</sup> If a fund is eligible to file a registration statement under this new instruction, the fund’s registration statement would incorporate certain past and future Exchange Act reports by reference, allowing the fund to use a short-form registration statement and avoid the need to make post-effective amendments in most cases. An affected fund could use the proposed instruction to register a shelf offering under rule 415(a)(1)(x), and we are proposing conforming amendments to that rule to make this clear. But the proposed instruction would not be limited to offerings under rule 415(a)(1)(x); an affected fund could use the proposed instruction to register any of the securities offerings that operating companies are permitted to register on Form S-3.<sup>29</sup>

#### Eligibility To File a Short-Form Registration Statement

An affected fund would be able to file a short-form registration statement under the proposed short-form registration instruction if:

- For either a BDC or a registered CEF, the fund meets the registrant and

transaction requirements of Form S-3 (i.e., the fund could register the offering on Form S-3 if it were an operating company);<sup>30</sup> and

- For registered CEFs, the fund also has been registered under the Investment Company Act for at least 12 calendar months immediately preceding the filing of the registration statement and has timely filed all reports required to be filed under section 30 of the Investment Company Act during that time.<sup>31</sup> This time period and timely-filing requirement parallel the requirements in Form S-3 regarding an issuer’s Exchange Act reports.

An affected fund would generally meet the registrant requirements of Form S-3 if it has timely filed all reports and other materials required under the Exchange Act during the prior year.<sup>32</sup> An affected fund would generally meet the transaction requirements of Form S-3 for a primary offering if the fund’s public float is \$75 million or more.<sup>33</sup> Requiring affected funds to satisfy the requirements of Form S-3 in order to file a short-form registration statement would provide parity for affected funds and operating companies.

Certain affected funds, including most interval funds,<sup>34</sup> do not list their securities on an exchange and do not have public float. As a result, there are some affected funds that generally would not be able to satisfy the transaction requirement necessary to file a short-form registration statement.<sup>35</sup>

<sup>28</sup> Proposed General Instruction A.2 of Form N-2. Some of the required amendments and the conditions in our current rules are available only to issuers that meet the eligibility and transaction requirements of Form S-3 and are therefore eligible to file a short-form registration statement on that form. The proposed short-form registration instruction in Form N-2 is designed to facilitate these amendments that we are proposing to implement the BDC Act and the Registered CEF Act.

<sup>29</sup> See General Instruction I.B of Form S-3 (identifying transactions that can be registered on the form); proposed General Instruction A.2.c of Form N-2, Form S-3, and therefore the proposed short-form registration instruction, also is available to a majority-owned subsidiary that is a closed-end management investment company eligible to register a securities offering on Form N-2 if (1) the subsidiary independently satisfies the form’s registrant eligibility and transactional requirements; (2) the parent satisfies the form’s registrant requirements and the transaction requirement for a primary offering of non-convertible securities; (3) the parent satisfies the form’s registrant eligibility and transactional requirements and provides a full and unconditional guarantee of the payment obligations on the securities being registered; (4) the parent satisfies the form’s registrant eligibility and transactional requirements and the securities of the registrant subsidiary being registered are guarantees of the payment obligations on the parent’s non-convertible securities; and (5) the parent satisfies the form’s registrant eligibility and transactional requirements and the securities of the registrant subsidiary being registered are guarantees of the payment obligations on the non-convertible securities being registered by another majority-owned subsidiary. See General Instruction I.C of Form S-3.

<sup>30</sup> See proposed General Instructions A.2.a and A.2.c of Form N-2; General Instructions I.A (registrant requirements) and I.B (transaction requirements) of Form S-3.

<sup>31</sup> Under the proposed amendment, the fund would also have to have timely filed all reports required to be filed under section 30 of the Investment Company Act during any portion of a month immediately preceding the filing of the registration statement. See proposed General Instruction A.2.b of Form N-2.

<sup>32</sup> See General Instruction I.A.3 of Form S-3. In addition, we are proposing two new Form 8-K reporting items for affected funds. An affected fund’s failure to timely file Form 8-K reports solely under these proposed items would not affect the fund’s ability to file a short-form registration statement on Form N-2. See *infra* Part II.H.3.

<sup>33</sup> See General Instruction I.B of Form S-3. For example, certain issuers with less than a \$75 million public float also are eligible to use Form S-3 to register a primary offering but are limited as to the amount of securities they can register. See General Instruction I.B.6 of Form S-3. See also *infra* Part II.C (discussing our consideration of a different level of public float for an affected fund to qualify as a WKSI or to file a short-form registration statement on Form N-2, or a different metric in lieu of an affected fund’s public float).

<sup>34</sup> Only one interval fund is currently exchange-traded.

<sup>35</sup> The proposed short-form registration instruction is designed to provide affected funds parity with operating companies by permitting them to use the instruction to register the same

Interval funds have their own offering provision, Securities Act rule 415(a)(1)(xi),<sup>36</sup> and certain post-effective amendments to their registration statements are immediately effective under rule 486(b) under the Securities Act.<sup>37</sup> As a result, interval funds currently have a tailored registration process that, although different in certain respects from that of operating companies, may provide many of the same efficiencies. In addition, because interval funds make continuous offerings, they would not be able to file a short-form registration statement that omits information required to be in an issuer’s prospectus when it is offering its securities.

Along with satisfying the registrant requirements of Form S-3, a registered CEF also must have timely filed all reports required under section 30 of the Investment Company Act for the preceding 12 months in order to register an offering under the proposed short-form registration instruction.<sup>38</sup> A registered CEF therefore must have timely filed during the prior year all required Exchange Act reports, such as annual and semi-annual reports to shareholders filed with the Commission on Form N-CSR,<sup>39</sup> as well as reports required only under section 30 of the Investment Company Act, such as reports on new Forms N-CEN<sup>40</sup> and N-PORT.<sup>41</sup>

transactions that an operating company can register on Form S-3. To register a primary offering of equity securities on Form S-3, an issuer must have a requisite amount of public float. See General Instruction I.B.1 of Form S-3. Alternatively, an issuer must have shares listed on an exchange and limit the amount sold over a twelve-month period to no more than one-third of the aggregate value of voting and non-voting common equity held by non-affiliates. See General Instruction I.B.6 of Form S-3. Interval funds that are not exchange-listed and without public float would not be qualified to register a primary offering of their shares on Form S-3.

<sup>36</sup> 17 CFR 230.415(a)(1)(xi).

<sup>37</sup> 17 CFR 230.486(b).

<sup>38</sup> See proposed General Instruction A.2.b of Form N-2.

<sup>39</sup> 17 CFR 249.331 and 17 CFR 274.128. Reports on Form N-CSR are filed both under the Exchange Act and the Investment Company Act.

<sup>40</sup> 17 CFR 249.330 and 17 CFR 274.101.

<sup>41</sup> 17 CFR 274.150. In October 2016, we modernized the reporting and disclosure of information by registered investment companies. Specifically, we adopted a new monthly portfolio reporting form, Form N-PORT, which replaces Form N-Q [17 CFR 249.332 and 17 CFR 274.130]. Form N-PORT requires registered investment companies other than money market funds and small business investment companies to report information about their monthly portfolio holdings to the Commission in a structured data format on a quarterly basis, 60 days after quarter end. See Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (“Reporting Modernization Release”); see also Amendments to the Timing Requirements for Filing Reports on

An issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers, and investors in the secondary market use that information in making their investment decisions.<sup>42</sup> Although all affected funds file reports under the Exchange Act, registered CEFs also file reports under the Investment Company Act. Investment Company Act reports also provide important information to the market and investors, including information about an affected fund's portfolio holdings that will be publicly reported on a quarterly basis on Form N-PORT. We believe that the market will analyze this portfolio holdings information in a similar manner to how it analyzes financial statements for operating companies to determine changes in prospects for growth and performance. Portfolio holdings disclosure on Form N-PORT, for example, provides important information that is comparable to information BDCs include in Exchange Act reports for purposes of providing a quarterly flow of key information to the market.<sup>43</sup> Moreover, requiring registered CEFs to have timely filed their Investment Company Act reports would also provide parity among BDCs, registered CEFs, and operating

companies. This is because once Form N-PORT fully replaces Form N-Q,<sup>44</sup> registered CEFs will only file Exchange Act reports semi-annually on Form N-CSR, whereas BDCs and operating companies file Exchange Act reports quarterly on Forms 10-K and 10-Q.<sup>45</sup> Under the proposal, all issuers would be required to have filed their quarterly and other required reports in order to file a short-form registration statement.<sup>46</sup>

#### Information Incorporated by Reference

The same rules on incorporation by reference that apply to Form S-3 registration statements would apply to a short-form registration statement filed on Form N-2.<sup>47</sup> Specifically, an affected fund relying on the short-form registration instruction would be required to:

- Specifically incorporate by reference into the prospectus and statement of additional information ("SAI"): (1) Its latest annual report filed pursuant to section 13(a) or section 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form N-CSR or Form 10-K was required to be filed; and (2) all other reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report (backward incorporation by reference);<sup>48</sup> and

- State that all documents subsequently filed pursuant to sections 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus and SAI (forward incorporation by reference).<sup>49</sup>

We also are proposing to allow an affected fund filing a short-form registration statement on Form N-2 to satisfy the disclosure requirements for its prospectus or SAI by incorporating the information by reference from Exchange Act reports.<sup>50</sup> This approach, which is substantively identical to a parallel item in Form S-3, would give affected funds filing a short-form registration statement on Form N-2 the option to either provide required disclosure directly in the prospectus or SAI or to satisfy Form N-2's disclosure requirements with information incorporated by reference.<sup>51</sup>

We considered requiring registered CEFs to incorporate by reference into their prospectuses and SAIs reports filed on Forms N-PORT and Form N-CEN. These forms provide important information to investors, other market participants, and Commission staff, and we propose including these forms in the timeliness requirement for registered CEFs to use the new short-form registration statement instruction.<sup>52</sup> This information, however, is not specifically required disclosure under Form N-2, and so incorporating it by reference would not update the required disclosures on Form N-2. Taking this consideration into account, we are not proposing to require such incorporation.

We are also proposing conforming changes to Form N-2's undertakings.<sup>53</sup> Form N-2 currently requires an

Form N-PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] ("N-PORT Modification Release"). We also adopted a new annual reporting form, Form N-CEN, to be used by registered investment companies to report annually certain census-type information. Fund groups with \$1 billion or more in net assets will begin filing reports on Form N-PORT with the Commission by April 30, 2019 (for the period ending March 31, 2019). Smaller fund groups (*i.e.*, fund groups with less than \$1 billion in net assets) will be required to begin submitting reports on Form N-PORT by April 30, 2020 (for the period ending March 31, 2020). *See also* Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)].

<sup>42</sup> *See* Shelf Registration, Securities Act Release No. 6499 (Nov. 17, 1983) [48 FR 52889 (Nov. 23, 1983)]. *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726 (recognizing that an "issuer's Exchange Act record provides the basic source of information to the market and to potential purchasers regarding the issuer and its management, business, financial condition, and prospects. Because an issuer's Exchange Act reports and other publicly available information form the basis for the market's evaluation of the issuer and the pricing of its securities, investors in the secondary market use that information in making their investment decisions.").

<sup>43</sup> Exchange Act reports, such as reports on Form 10-Q or Form N-CSR, include information required by Regulation S-X. Certain reports on Form N-PORT must include the portfolio holdings information required by the schedules set forth in rules 12-12 through 12-14 of Regulation S-X. *See* Part F of Form N-PORT. We also require reports on Form N-PORT to include, in a structured format, data elements that are otherwise required by Regulation S-X. *See* Reporting Modernization Release, *supra* footnote 41, at 81894.

<sup>44</sup> Form N-Q will be rescinded on May 1, 2020. *See supra* footnote 41.

<sup>45</sup> Reports on Form N-PORT with monthly information will be filed with the Commission on a quarterly basis, but only information reported for the third month of each fund's fiscal quarter on Form N-PORT will be publicly available (and not until 60 days after the end of the fiscal quarter).

<sup>46</sup> Affected funds historically must have timely filed reports on Forms N-Q and N-SAR for the preceding 12 months in order to rely on rule 415(a)(1)(x). This is because to rely on that rule, an issuer must have timely filed required Exchange Act reports and Form N-Q is, and Form N-SAR was, filed under both the Investment Company Act and section 13(a) or 15(d) of the Exchange Act.

<sup>47</sup> *See* section 803(c)(1) of the BDC Act (directing us to include an item or instruction that is similar to item 12 on Form S-3 to provide that a BDC that would otherwise meet the requirements of Form S-3 shall incorporate by reference the reports and documents filed by the BDC under the Exchange Act into the registration statement of the BDC filed on Form N-2). We would eliminate current General Instruction F.3 of Form N-2 in its entirety and replace it with proposed General Instruction F.3. In these proposed provisions and others that are substantively identical to parallel provisions in Form S-3, we have proposed conforming references to a fund's SAI.

<sup>48</sup> Proposed General Instruction F.3.a(1)-(2) of Form N-2; *cf.* Item 12(a)(1)-(2) of Form S-3. In addition, if sales of a class of capital stock are to be registered on Form N-2 and the same class is registered under section 12 of the Exchange Act, the affected fund must incorporate by reference the description of the class contained in the Exchange Act registration statement with respect to that class

(including any amendment or reports filed for the purpose of updating such description). Proposed General Instruction F.3.a(3) of Form N-2; *cf.* Item 12(a)(3) of Form S-3.

<sup>49</sup> Proposed General Instruction F.3.b of Form N-2; *cf.* Item 12(b) of Form S-3.

<sup>50</sup> *See* proposed General Instruction F.3. The proposed amendments would permit a fund to use this incorporated information to provide the disclosure required by Items 3-13 and Items 16-24 of Form N-2. Proposed General Instruction F.3.c of Form N-2; *cf.* Item 12(d) of Form S-3.

<sup>51</sup> The BDC Act directs that we extend this parallel item in Form S-3 (Item 12) to BDCs that meet Form S-3's requirements. *See supra* footnote 47; Item 12(d) of Form S-3; *see also* section 509(a) of the Registered CEF Act.

<sup>52</sup> Proposed General Instruction A.2.b of Form N-2.

<sup>53</sup> *See* section 803(b)(2)(P) of the BDC Act (directing us to revise Item 34 of Form N-2 to require a BDC to provide undertakings that are no more restrictive than the undertakings that are required of a registrant pursuant to Item 512 of Regulation S-K, which are the undertakings that apply to an operating company registering an offering on Form S-3).

undertaking that would prevent seasoned funds from incorporating information by reference as proposed because it requires these funds to file post-effective amendments in certain circumstances (and would do so regardless of whether the information had already been incorporated by reference).<sup>54</sup> In contrast, operating companies registering on Form S-3 are not required to make this undertaking if the required information is included in an Exchange Act report incorporated by reference or in a prospectus supplement that is part of the registration statement.<sup>55</sup> To implement the statutory mandate and provide parity for affected funds, we propose to amend Form N-2's undertakings to provide the same approach for affected funds filing a short-form registration statement on that form that applies to operating companies that file on Form S-3.<sup>56</sup>

#### Affected Funds' Use of Rule 415(a)(1)(x) and Automatic Shelf Registration Statements

We are proposing two additional amendments to allow affected funds to use the shelf registration system in parity with operating companies. First, we propose to amend rule 415(a)(1)(x) to clarify that affected funds may use that rule by adding references to a registration statement filed under the proposed short-form registration instruction.<sup>57</sup> Second, we propose a

new general instruction to permit affected funds that would be WKSIs under the proposed amendments to file an automatic shelf registration statement.<sup>58</sup> A WKSI can register unspecified amounts of different types or classes of securities on an automatic shelf registration statement.<sup>59</sup> The ability to use an automatic shelf registration statement means that the registration statement and any amendments will be effective immediately upon filing.<sup>60</sup> Automatic shelf registration provides WKSIs with significant flexibility to take advantage of market windows, structure terms of securities on a real-time basis to accommodate investor demand, and determine or change the plan of distribution in response to changing market conditions. WKSIs using an automatic shelf registration statement also benefit by being able to pay filing fees at any time in advance of a shelf takedown or on a "pay-as-you-go" basis at the time of each takedown off the shelf registration statement in an amount calculated for that takedown.<sup>61</sup> Our proposed amendments would extend these same benefits to affected funds that would be WKSIs under the

rule 415(a)(1)(x) to provide that a BDC that would otherwise meet the eligibility requirements of Form S-3 can register its securities under that provision). We also are proposing to add a reference to a Form N-2 registration statement filed pursuant to General Instruction A.2 to rule 415(a)(2) to make clear that affected funds registering offerings pursuant to rule 415(a)(1)(ix), like other issuers relying on that provision, would not be subject to the limitation that they register an amount of securities that the issuer reasonably expected would be offered or sold within two years from the date that the registration statement became effective. *Cf.* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44774-44775.

<sup>58</sup> See proposed General Instruction B of Form N-2; section 803(c)(2) of the BDC Act (directing that we amend Form N-2 to include an instruction that is similar to the instruction regarding automatic shelf registration offerings by well-known seasoned issuers on Form S-3 to provide that a BDC that is a well-known seasoned issuer may file automatic shelf offerings on Form N-2). The proposed instruction would provide that an affected fund that is a WKSI may use the form as an automatic shelf registration statement only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D of Form S-3. This provides parity with operating companies because General Instruction I.D of Form S-3 specifies the transactions and requirements for an automatic shelf registration statement filed on Form S-3. Consistent with General Instruction I.D of Form S-3, proposed General Instruction B specifies that the form could not be used as an automatic shelf registration statement for securities offerings under rule 415(a)(1)(vii) or (viii).

<sup>59</sup> See rule 430B(a) under the Securities Act [17 CFR 230.430B(a)].

<sup>60</sup> See rule 462(e) and rule 462(f) under the Securities Act [17 CFR 230.462(e) and 17 CFR 230.462(f)].

<sup>61</sup> See rule 457(r) and rule 456(b) under the Securities Act [17 CFR 230.457(r) and 17 CFR 230.456(b)].

proposed amendments, as directed by the BDC Act and the Registered CEF Act.<sup>62</sup>

We request comment on these proposed amendments, including:

- Do the proposed amendments provide parity to affected funds? Why or why not? Are there other changes that we should make that would provide parity for affected funds? What changes and why?

- Currently, Form S-3 under specified circumstances allows majority-owned subsidiaries of a parent issuer eligible to use Form S-3 to register offerings of certain non-convertible securities or guarantees under General Instruction I.C of the form. Under the proposed amendments, an affected fund could use the new short-form registration instruction of Form N-2 to register the same types of offerings that operating companies can register on Form S-3, including offerings by majority-owned subsidiaries that are closed-end management investment companies eligible to register a securities offering on Form N-2. Is it appropriate to amend Form N-2 to provide a similar process for affected funds to register the same types of offerings by majority-owned subsidiaries that operating companies can register on Form S-3? Would affected funds expect to register these offerings using the proposed short-form registration instruction? How do affected funds treat securities issued by majority-owned subsidiaries that are investment companies when calculating asset coverage under sections 18 or 61 of the Investment Company Act? <sup>63</sup> If affected funds do not include these securities in calculating asset coverage, why not?

- Rather than amending Form N-2, should we create a separate registration form specifically for affected funds to file a short-form registration statement?

- Should we require registered CEFs to have timely filed reports under section 30 of the Investment Company Act during the prior year in order to file a short-form registration on Form N-2, as proposed?

- We are proposing to allow an affected fund filing a short-form registration statement on Form N-2 to satisfy the disclosure requirements for its prospectus or SAI by incorporating the information by reference from Exchange Act reports. Are there any

<sup>62</sup> We are proposing conforming amendments to Securities Act rule 462(f) and to the registration fee table in Form N-2 to enhance consistency with Form S-3 and to recognize that affected funds that would be WKSIs could use the pay-as-you-go registration fee process.

<sup>63</sup> 15 U.S.C. 80a-18 and 80a-60.

<sup>54</sup> Form N-2 currently requires an affected fund registering an offering under rule 415 to undertake to file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement under certain circumstances, including to provide any prospectus required by section 10(a)(3) of the Securities Act. Item 34.4.a(1) of Form N-2.

<sup>55</sup> See Item 512(a)(iii)(B) of Regulation S-K [17 CFR 229.512(a)(iii)(B)].

<sup>56</sup> Specifically, we propose to add a new provision to Item 34.4.a of Form N-2 stating that the requirement to undertake to file a post-effective amendment would not apply if the registration statement is filed under the proposed short-form registration instruction and the information required to be included in a post-effective amendment by Items 34.4.a(1)-(3) is contained in Exchange Act reports that are incorporated by reference into the fund's registration statement or is contained in a form of prospectus that is part of the registration statement. See proposed Item 34.4.a of Form N-2; *cf.* Item 512(a) of Regulation S-K.

We also propose to revise Item 34 to make conforming changes to mirror parallel undertakings in Item 512 of Regulation S-K. See, e.g., proposed Item 34.4.a(2) of Form N-2; *cf.* Item 512(a)(1)(ii) of Regulation S-K; proposed Item 34.4.d(1) of Form N-2; *cf.* Item 512(a)(5)(i) of Regulation S-K; proposed Item 34.4.e(2)-(3) of Form N-2; *cf.* Item 512(a)(6)(ii)-(iii) of Regulation S-K; proposed Item 34.6 of Form N-2; *cf.* Item 512(b) of Regulation S-K; and proposed Item 34.7 of Form N-2; *cf.* Item 512(h) of Regulation S-K.

<sup>57</sup> See proposed rule 415(a)(1)(x) (revised to include securities registered pursuant to General Instruction A.2 of Form N-2). See also section 803(b)(2)(f) of the BDC Act (directing us to revise

specific prospectus or SAI disclosure items that an affected fund should not be permitted to incorporate by reference into the registration statement? If so, which ones and why?

- An affected fund filing a short-form registration statement on Form N-2 would incorporate by reference into its prospectus and SAI certain past and future Exchange Act reports. This could increase an affected fund's liability with respect to information that has not previously been incorporated into its registration statement. Would this raise any concerns unique to affected funds? For example, is there any information in registered CEFs' annual and semi-annual reports that should not be incorporated by reference? If so, which information and why?

- Are there any changes we should make to the registration process for interval funds? Should we, for example, permit them to forward incorporate if they would be eligible to rely on the proposed short-form registration instruction but for their lack of public float? Why or why not? Is there a basis to treat interval funds differently in this respect than any other issuer that does not have public float? Besides the additional flexibility in the aspects of the offering process that interval funds would receive under this proposal,<sup>64</sup> are there any other ways in which we should modernize the offering process for interval fund offerings?

- Unlisted BDCs and unlisted registered CEFs also would not generally have "public float." Are there any changes we should make to the shelf registration process for these funds?

- Are there any other line items or language from Forms S-1 or S-3 that we should include in Form N-2 to facilitate the incorporation by reference regime (or to otherwise enhance or modernize Form N-2 to provide parity with the operating company regime)? For example, is it necessary or useful to add a new item for "Material Changes" in Form N-2 that mirrors Item 11A of Form S-1 and Item 11(a) of Form S-3?<sup>65</sup> Those items generally provide that, where a registrant is backward incorporating information by reference into a new registration statement, it must disclose in the registration

statement any material changes that have not been disclosed in an Exchange Act report being incorporated by reference. Would it be necessary or useful to include a new item for "Material Changes" in Form N-2 to remind registrants that, as currently required, the new registration statement must include all material information? Would it elicit any disclosure that is not otherwise required by Form N-2's other items?

- We are not proposing to require that registered CEFs incorporate by reference reports filed on Forms N-PORT or N-CEN. Do commenters agree that this is appropriate? Conversely, should the reports on those forms be incorporated by reference? Should we permit or require a fund to incorporate the exhibit to certain reports on Form N-PORT that sets forth a registered CEF's complete portfolio holdings presented using the form and content specified by Regulation S-X? Would incorporating these reports allow funds to update any aspect of their registration statement and in that way avoid having to provide the same information through a prospectus supplement or post-effective amendment?

- Are there incorporation by reference provisions in any other registration forms filed by affected funds that should be modified to provide parity or consistency across registration statements, and if so, in what respect? For example, should we amend General Instruction G of Form N-14 to provide that BDCs may incorporate by reference to the same extent as registered CEFs? Would BDCs use this ability to incorporate information by reference?

- Proposed General Instruction B cross-references General Instructions I, E, F, and G and IV of Form S-3. These instructions explain the application of general rules and regulations. Cross-referencing these instructions would direct registrants' attention to them without having to set forth the instructions in Form N-2 as well. Would it be clearer, however, to set forth the substance of those instructions in Form N-2?

#### b. Omitting Information From a Base Prospectus and Prospectus Supplements

Affected funds registering securities in shelf offerings under Securities Act rule 415 can generally omit required information from the base prospectus that is unknown or not reasonably available to the fund when the registration statement becomes effective.<sup>66</sup> Rule 430B also permits WKSIs and certain issuers eligible to use

Form S-3 for primary offerings to omit certain additional information. A base prospectus that omits statutorily-required information is not a final prospectus under section 10(a) of the Securities Act.<sup>67</sup> Filing a prospectus supplement is one way to provide information required for a prospectus to satisfy section 10(a).<sup>68</sup>

Our rules currently provide different processes for operating companies and investment companies to file prospectuses. Operating companies currently follow rule 424 to file prospectus supplements, whereas investment companies follow rule 497. Although these rules provide similar processes, they have certain key differences. For example, rule 424(b) is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. Rule 497 does not contain provisions specifically related to offerings under rule 415(a)(1)(x) and requires the fund to file a prospectus with the Commission before using it. Rule 424 also requires an issuer to file a prospectus only if the issuer makes substantive changes from or additions to a previously-filed prospectus, whereas rule 497 requires funds to file every prospectus that varies from any previously-filed prospectus.

In order to provide parity with operating companies, the BDC Act directs us to include a process for a BDC to file a prospectus in the same manner as under rule 424(b).<sup>69</sup> Consistent with this directive and with the Registered CEF Act, we are proposing to amend rule 424(f) to allow affected funds to file a prospectus under rule 424.<sup>70</sup> Under the proposed amendment, an affected fund would be able to file any type of prospectus enumerated in rule 424(b) to update, or to include information omitted from, a prospectus or in connection with a shelf takedown. We also are proposing to amend rule 497 to provide that rule 424 would be the exclusive rule for affected funds to file a prospectus supplement other than an advertisement that is deemed to be a

<sup>67</sup> 15 U.S.C. 77j(a).

<sup>68</sup> Omitted information also may be provided in a post-effective amendment or, where permitted, through Exchange Act filings that are incorporated by reference.

<sup>69</sup> See section 803(b)(2)(K) of the BDC Act.

<sup>70</sup> The proposed amendments would not apply to open-end funds or other registered investment companies. Accordingly, those investment companies would continue to file prospectuses pursuant to rule 497. See proposed amendments to rule 424(f). We also are proposing to amend rule 424(f) to state that references to the term "form of prospectus" in the rule includes the Statement of Additional Information.

<sup>64</sup> See *supra* footnote 16.

<sup>65</sup> See Item 11A of Form S-1 (directing a registrant that elects to incorporate information by reference to describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K and that have not been described in a Form 10-Q or Form 8-K filed under the Exchange Act); see also Item 11(a) of Form S-3 (describing parallel requirements).

<sup>66</sup> See Securities Act rule 409 [17 CFR 230.409].

prospectus under rule 482.<sup>71</sup> This would avoid any confusion that might result if affected funds were permitted to file prospectuses under both rule 424 and rule 497, while also continuing to require affected funds to file rule 482 advertisements as they and other investment companies do today.

We also are proposing an amendment to permit affected funds to use rule 430B in parity with operating companies. That rule permits an issuer to omit specified information from its base prospectus in two circumstances. First, a WKSII filing an automatic shelf registration statement can omit the plan of distribution and whether the offering is a primary one or an offering on behalf of selling security holders. An amendment to rule 430B is not required to achieve parity with respect to this first use because, once affected funds are permitted to qualify as WKSIs, those that are WKSIs would be able to rely on rule 430B as currently written. Second, the rule also applies to issuers eligible to file a registration statement on Form S-3 to register a primary offering, where the issuer is registering securities for selling security holders. In this case, the prospectus can omit the same information that WKSIs can omit, as well as the identities of selling security holders and the amount of securities to be registered on their behalf, subject to conditions. Unlike the first use, this second use would not be available to affected funds without a modification to the rule. Accordingly, we are proposing an amendment to allow affected funds eligible to register a primary offering under the proposed short-form registration instruction to rely on rule 430B for this second use as well. In addition, affected funds relying on rule 430B, like operating companies, would undertake that for purposes of determining liability under the Securities Act with respect to any purchaser, each prospectus supplement is deemed part of the registration statement containing the base prospectus to which the supplement relates. This is measured as of the earlier of the date the prospectus supplement is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus.<sup>72</sup>

<sup>71</sup> See proposed Securities Act rule 497(l).

<sup>72</sup> See proposed rule 430B(b). Rules 430B, 424, and 158 specify when information contained in a prospectus supplement will be deemed part of and included in the registration statement and circumstances that will trigger a new effective date of the registration statement for purposes of section 11(a) of the Securities Act. These rules would apply to affected funds just as they apply to operating companies. We also are proposing to amend the

We request comment on these proposed amendments, including:

- Should we amend rule 424(f) as proposed to allow affected funds to file a prospectus under rule 424? Is this an effective means to implement the parity requirements of the BDC Act and Registered CEF Act? Why or why not?
- Are there additional amendments that we should make to rules 430B, 424, or 497 to allow affected funds to omit information from their base prospectuses and file prospectus supplements in parity with operating companies?
- Should we make rule 424 the exclusive rule under which affected funds must file prospectuses as proposed, or should we allow affected funds to have the option to file a prospectus under rule 424 or rule 497? If we provided optionality, would that increase the potential to cause confusion for funds or investors? Are there any other consequences of requiring affected funds to use rule 424 that we should consider? Rather than require affected funds to use rule 424 as proposed, should we amend rule 497 to include the substantive requirements of rule 424 for affected funds?

#### c. Additional Information in Periodic Reports

Under the proposed amendments, certain affected funds would be permitted to forward incorporate information from their Exchange Act reports. These funds may wish to include information in their periodic reports that is not required to be included in these reports in order to update their registration statements. We therefore propose to include a new instruction to Form N-2 that would allow a fund to include additional information so as long as the fund includes a statement in the report identifying information that it has included for this purpose.<sup>73</sup> This would provide context for investors in considering this additional disclosure, akin to the context funds today provide investors when they mail prospectus “stickers” updating disclosure in the prospectus.

We request comment on this proposed instruction, including:

- Does the proposed instruction adequately provide a mechanism for affected funds to update their

undertakings in Form N-2 to require affected funds relying on rule 430B to make the same undertakings required of operating companies that rely on the rule. See proposed Item 34.4.d(1); cf. Item 512(a)(5)(i) of Regulation S-K. See also *supra* footnote 53.

<sup>73</sup> Proposed Instruction 6.i of Item 24 of Form N-2.

registration statements via their periodic reports?

- Does the proposed instruction provide sufficient guidance to an affected fund regarding whether and how it may include additional information in its periodic reports to update its registration statement, and how to identify that information?
- Is there any reason we should not permit affected funds to incorporate by reference information from their periodic reports that is not required to be included in those reports, or should we further prescribe how any additional information must be presented? Should we, for example, require that any additional information appear after the information affected funds are required to include in their annual reports?
- In addition to affected funds’ periodic reports, should we also require an affected fund to identify information included in a report on Form 8-K filed for the purpose of updating the fund’s registration statement?

#### C. Well-Known Seasoned Issuer Status

We are proposing amendments that would allow an affected fund to qualify as a WKSII. In 2005, the Commission created a new category of issuer—a WKSII—that benefits to the greatest degree from the modifications to our rules regarding communications and the registration processes that the Commission adopted at that time.<sup>74</sup> A WKSII, for example, can file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than non-WKSIs. Subject to certain conditions, our rules also permit a WKSII to communicate at any time, including through a free writing prospectus, without violating the “gun-jumping” provisions of the Securities Act.<sup>75</sup> In order for an issuer to qualify as a WKSII, the issuer must meet the registrant requirements of Form S-3, *i.e.*, it must be “seasoned,”<sup>76</sup> and generally must have at least \$700 million in “public float.”<sup>77</sup> An issuer is ineligible for

<sup>74</sup> Securities Offering Reform Adopting Release, *supra* footnote 5, at 44727.

<sup>75</sup> See *infra* Part II.E.1.

<sup>76</sup> See *supra* footnote 18.

<sup>77</sup> See paragraph (1)(i)(A) of the WKSII definition in rule 405 (providing that the issuer must have at least \$700 million in worldwide “public float,” that is, the market value of outstanding voting and non-voting common equity held by non-affiliates). An alternative basis for an issuer to satisfy this requirement is to have issued, for cash, within the last three years, at least \$1 billion in aggregate principal amount of non-convertible securities through primary offerings registered under the Securities Act (paragraph (1)(i)(B) of the WKSII definition). The definition also includes provisions for transactions involving majority-owned



WKSI status if, among other bases: (1) It is not current and timely in its Exchange Act reports, or (2) it is the subject of a judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the federal securities laws (the “anti-fraud prong” of the ineligible issuer definition).<sup>78</sup>

The BDC Act directs us to revise Securities Act rule 405 to allow a BDC to qualify as a WKSI and the Registered CEF Act directs us to allow registered CEFs covered by the Act to use the securities offering rules that are available to operating companies.<sup>79</sup> We are also proposing conforming amendments to the definition of an “ineligible issuer.” Specifically:

- First, the WKSI definition specifically excludes BDCs and registered investment companies. We propose to amend rule 405 so that the exclusion does not apply to affected funds.<sup>80</sup>
- Second, the WKSI definition currently provides that an issuer must meet the registrant requirements of Form S-3. We propose to add a parallel reference to the registrant requirements of the proposed short-form registration instruction.<sup>81</sup>
- Third, we propose to amend the definition of “ineligible issuer” to provide that a registered CEF would be ineligible if it has failed to file all reports and materials required to be filed under section 30 of the Investment Company Act during the preceding 12 months. This provision is consistent with the proposed short-form registration instruction and would mirror the current Exchange Act reporting provision in the ineligible issuer definition.<sup>82</sup>
- Finally, we propose to amend the definition of ineligible issuer to give

effect to the current anti-fraud prong in that definition in the context of affected funds. Specifically, we are proposing a parallel anti-fraud prong for affected funds. The current anti-fraud prong provides that an issuer that, within the past three years, was the subject of a judicial or administrative decree or order arising out of a governmental action involving violations of the anti-fraud provisions of the federal securities laws would be an ineligible issuer.<sup>83</sup> The proposed new anti-fraud prong for affected funds would provide that an affected fund would be an ineligible issuer if within the past three years its *investment adviser*, including any sub-adviser, was the subject of any judicial or administrative decree or order arising out of a governmental action, that determines that the *investment adviser aided or abetted or caused* the affected fund to have violated the anti-fraud provisions of the federal securities laws.<sup>84</sup> Investment companies typically are externally managed by an investment adviser, which is primarily responsible for the day-to-day management of the fund and the preparation of the fund’s disclosures.

We considered proposing a different level of public float for an affected fund to qualify as a WKSI (or to file a short-form registration statement on Form N-2), or a different metric in lieu of an affected fund’s public float, such as its net asset value for funds whose shares are not traded on an exchange.<sup>85</sup> Either of these types of changes could permit additional affected funds to qualify as WSIs and enjoy the associated benefits. The BDC Act and the Registered CEF Act, however, direct that we allow the funds covered by those Acts to use the rules available to operating companies.

Specifically, the WKSI definition, including its \$700 million public float threshold, is meant to capture issuers that are presumptively the most widely followed in the marketplace and whose disclosures and other communications are subject to market scrutiny by investors, the financial press, analysts, and others.<sup>86</sup> As a result of the active participation of these issuers in the markets and, among other things, the wide following of these issuers by market participants, the media, and institutional investors, the Commission has previously stated that it believes that it is appropriate to provide communications and registration flexibilities to WSIs beyond that provided to other issuers, including other seasoned issuers.<sup>87</sup>

In adopting the current \$700 million public float threshold for WSIs, the Commission observed that high levels of analyst coverage, institutional ownership, and trading volume are useful indicators of the scrutiny that an issuer receives from the market, recognizing that no one statistic can fully capture the extent to which an issuer is followed by the market.<sup>88</sup> Operating company issuers with market capitalization in excess of \$700 million that conducted offerings from 1997 to 2004 typically had an average of 12 analysts following them prior to the offering, which the Commission observed was likely a conservative indicator of analyst scrutiny because it included only sell-side analysts.<sup>89</sup> Institutional investors accounted for an average of 52% of equity ownership prior to offerings by issuers with market capitalization above \$700 million; these issuers had an average daily trading volume of nearly \$52 million prior to offerings in this period; and these issuers accounted for significant percentages of capital raised (e.g., 70% of equity capital raised from 1997 to 2004).<sup>90</sup> The Commission observed that the issuers that would meet the thresholds for WKSI status are the most active issuers in the U.S. public capital markets.<sup>91</sup>

Affected funds, in contrast, have limited analyst coverage relative to operating companies and many have high levels of retail, rather than institutional, investors.<sup>92</sup> Affected funds

subsidiaries (paragraph (1)(ii) of the WKSI definition).

<sup>78</sup> See paragraph (1)(i) and (1)(vi) of the definition of ineligible issuer in Securities Act rule 405.

<sup>79</sup> Section 803(b)(2)(A)(i).

<sup>80</sup> See proposed amendments to paragraph (1)(v) of rule 405.

<sup>81</sup> See proposed amendments to paragraph (1)(v) of the WKSI definition in rule 405. In addition, in certain places where the WKSI definition currently refers to Form S-3, we propose to add conforming references to a Form N-2 registration statement filed under proposed General Instruction A.2 of Form N-2. See proposed amendments to paragraph (1)(i) and (1)(i)(B)(2) of the definition of WKSI in rule 405. See proposed General Instruction A.2 of Form N-2. We also are proposing a conforming amendment to paragraph (2) of the definition of WKSI to add a reference to Form N-CSR, the form on which registered CEFs file their shareholder reports with the Commission. See proposed amendment to paragraph (2) of the definition of WKSI in Securities Act rule 405. See also *infra* Part II.D.2.

<sup>82</sup> See *supra* footnote 78.

<sup>83</sup> See paragraph (1)(vi) of the ineligible issuer definition in rule 405.

<sup>84</sup> See proposed paragraph (1)(ix) of the ineligible issuer definition in rule 405. The proposed amendment’s reference to an affected fund’s investment adviser would include any sub-adviser. This is consistent with the Investment Company Act’s definition of an “investment adviser” to an investment company, which includes sub-advisers. See section 2(a)(20) of the Investment Company Act. Cf. proposed Item 10.01 of Form 8-K (providing that an affected fund would be required to file a Form 8-K report if the fund’s investment adviser, including any sub-adviser, has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval).

<sup>85</sup> We focus in this section on affected funds’ public float because we believe that affected funds would be more likely to qualify for WKSI status on the basis of having \$700 million or more in public float than to have to have issued, for cash, within the last three years, at least \$1 billion in aggregate principal amount of non-convertible securities in registered offerings. See *supra* footnote 77.

<sup>86</sup> See *id.* at 44726–30.

<sup>87</sup> See *id.* at 44727.

<sup>88</sup> See *id.* at 44728.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 44727.

<sup>92</sup> For example, listed BDCs having on average six security analysts following them as of December 2017, and listed registered CEFs having on average

Continued



have relatively modest daily trading volumes: For example, the average daily dollar volume of a listed affected fund (a listed BDC or listed registered CEF) prior to offerings was \$3.8 million in 2017, and listed affected funds represented less than one percent of the daily dollar trading volume on the New York Stock Exchange and NASDAQ in 2017.<sup>93</sup> Affected funds also do not account for significant percentages of capital raised, with affected funds (listed and non-listed) raising about two percent of the total capital raised in 2017 in registered offerings.<sup>94</sup> Based on our consideration of the same criteria the Commission evaluated in 2005, we do not believe that affected funds would be likely to have a level of market following at lower levels of public float than operating companies that would justify a lower public float threshold or alternative metric to qualify as a WKSI. We also are not aware of alternative indicia of a market following for affected funds or any particular type of affected funds that would suggest a lower public float threshold, or alternative metric in lieu of public float, would be appropriate. We believe these same considerations also support our proposal to require affected funds to have the same level of public float to file a short-form registration statement—currently \$75 million—that applies to operating companies.<sup>95</sup>

Indeed, based on the general level of affected funds' analyst coverage, trading volume, and capital raised, we considered whether the public float threshold should be higher for affected funds than for operating companies. We determined not to propose a higher threshold, however, because we believe the same public float threshold for all issuers would be consistent with the general directive in the BDC Act and the Registered CEF Act to provide the funds covered in those Acts the securities

offerings rules available to operating companies.

We also considered whether to propose any modifications to the way that an affected fund would calculate its public float. The Commission recently adopted new Securities Act rule 139b to permit broker-dealers to publish "covered investment fund research reports," which include reports covering affected funds.<sup>96</sup> In that rulemaking the Commission determined not to require broker-dealers to exclude shares held by the fund's affiliates from the calculation of the fund's public float.<sup>97</sup> Our approach to the public float calculation in rule 139b, however, was designed to address operational challenges broker-dealers could experience in obtaining affiliate shareholder information.<sup>98</sup> Affected funds should not experience the same operational difficulties in calculating their own public float. Indeed, BDCs currently disclose their public float net of affiliate holdings on Form 10-K, and registered CEFs (as well as BDCs) that conduct offerings under rule 415(a)(1)(x) currently must determine their public float net of affiliate holdings to evaluate their eligibility to use that rule.

Not all affected funds will have public float or the level of public float required to be a WKSI or to file a short-form registration statement. For example, unlisted funds, including interval funds, will generally not have public float. However, the same is true for operating companies. For example there are many unlisted real estate investment trusts that do not have a public float and cannot qualify as a WKSI.<sup>99</sup> An unlisted affected fund, like an unlisted operating company, could list its shares and qualify as a WKSI or use a short-form registration statement if it had the requisite public float and met the other requirements. We request comment in this release on extending the benefits of particular reforms to affected funds that would not qualify because they do not have the requisite public float.<sup>100</sup>

We request comment generally on the proposed amendments to the WKSI and ineligible issuer definitions, including:

- Would these proposed amendments to the WKSI definition provide parity to affected funds? Why or why not? Are there other revisions that we should make to the definition to achieve that objective?

- Are the proposed amendments to the definition of ineligible issuer appropriate, and would they help give effect to the current anti-fraud prong of the ineligible issuer definition in the context of affected funds, in light of funds' management structure? If not, what approach would better give effect to the anti-fraud prong in the context of affected funds? Are the proposed amendments clear, and would issuers understand what it means for an investment adviser, including any sub-adviser, to have aided or abetted or caused the issuer to have violated the anti-fraud provisions of the federal securities laws? If not, how should we change, or provide guidance on, the proposed provision? For example, should we clarify how the proposed ineligible issuer definition would apply to a fund where the investment adviser, including any sub-adviser, aided, abetted, or caused the fund to have violated certain anti-fraud provisions within the three-year look-back period that the proposed definition specifies, and then the fund selected a new investment adviser within this same period?

- The activities of affected funds, unlike those of operating companies, are substantively regulated under the Investment Company Act. For example, certain provisions of the Investment Company Act directly govern the operations of investment companies, such as prohibitions on management self-dealing,<sup>101</sup> breaches of fiduciary duty,<sup>102</sup> or changes in an investment company's business or investment policies without shareholder approval.<sup>103</sup> Neither the current ineligible issuer definition in rule 405 nor our proposed amendments to the definition would cover substantive provisions of the Investment Company Act that do not involve a violation of the anti-fraud provisions of the federal securities laws. Should we expand the definition of ineligible issuer to include violations of non-antifraud provisions of

for interval funds that do not list their securities on an exchange and do not have public float).

<sup>101</sup> See section 17 of the Investment Company Act [15 U.S.C. 80a–17].

<sup>102</sup> See section 36 of the Investment Company Act [15 U.S.C. 80a–35].

<sup>103</sup> See section 13 of the Investment Company Act [15 U.S.C. 80a–13].

zero security analysts following them as of December 2017. Data on analyst coverage is taken from the I/B/E/S database (Thomson Reuters).

<sup>93</sup> Data on daily trading volume is taken from the TAQ database. Data on securities offerings is taken from taken from Securities Data Corporation's New Issues database (Thomson Reuters). We estimated affected funds' average daily trading volume during a period of a month prior to a securities offering. See also *infra* footnote 383 and accompanying text (discussing institutional ownership of affected funds and operating companies).

<sup>94</sup> Data on registered securities offerings are taken from Securities Data Corporation's New Issues database (Thomson Reuters).

<sup>95</sup> See *supra* footnote 33 (explaining that there are other bases to file a short-form registration statement on Form S-3 that do not require an issuer to have \$75 million in public float and that these other bases would also be available to affected funds filing a short-form registration statement on Form N-2).

<sup>96</sup> See *infra* Part II.E.2.

<sup>97</sup> In new rule 139b, consistent with this proposal, we generally provided that issuers covered in research reports published under the rule must have the same level of public float required for research reports on operating companies.

<sup>98</sup> See Covered Investment Fund Research Reports, Securities Act Release No. 10580 (Nov. 30, 2018) [83 FR 26788 (Dec. 13, 2018)] ("CIFRR Adopting Release").

<sup>99</sup> The determination of public float is based on a public trading market, such as an exchange or certain over-the-counter markets. See Securities Offering Reform Adopting Release, *supra* footnote 5, at n.50.

<sup>100</sup> See, e.g., *supra* footnotes 35–37 and accompanying text; requests for comment in *supra* Part II.B.2.a (requesting comment on whether we should make any changes to the registration process

the Investment Company Act? If so, which provisions of the Investment Company Act? For example, should an affected fund be ineligible if it is the subject of a judicial or administrative decree involving violations of the self-dealing provisions of section 17 or 57 of the Investment Company Act, or such a decree involving violations of the asset coverage requirements of section 18 or 61 of the Investment Company Act?

- Should we adopt a different level of public float for an affected fund to qualify as a WKSI (or to file a short-form registration statement on Form N-2), or a different metric in lieu of an affected fund's public float? If so, which level or metric and why?

- Should we, for example, provide for a different metric for interval funds, whose shares are generally not listed on an exchange, or for other unlisted affected funds? If so, which metric and why? For example, would it be appropriate to allow these funds to use their net asset values in lieu of or in addition to public float? Do interval funds or other unlisted affected funds with net asset values of \$700 million or more (or \$75 million or more) have a similar degree of market following and scrutiny as listed issuers with comparable amounts of public float? Are there other metrics tailored to affected funds that would indicate a similar degree of market following and scrutiny as listed issuers with comparable amounts of public float? Would it be appropriate to provide more advantageous provisions for interval funds or other types of affected funds relative to operating companies? Should we adopt any differences in the way that an affected fund would calculate its public float?

#### D. Final Prospectus Delivery Reforms

We propose to apply the alternative delivery method for operating company final prospectuses to affected funds. As a result, an affected fund would be allowed to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission.

The Securities Act requires registrants to deliver to each investor in a registered offering a prospectus meeting the requirements of section 10(a) (known as a "final prospectus").<sup>104</sup> Section 5(b)(2) makes it unlawful to deliver a security for the purpose of sale or for delivery after sale unless accompanied or preceded by a final prospectus. After the effective date of a registration statement, a written communication that offers a security for sale, or confirms the sale of a security,

may be provided to investors if a final prospectus is sent or given previously or at the same time. Otherwise, such a communication is a prospectus and may not be provided unless it meets the requirements of section 10(a).<sup>105</sup>

Rule 172 allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules and other conditions are satisfied.<sup>106</sup> For example, rule 172 provides that a final prospectus will be deemed to precede or accompany a security for sale for purposes of section 5(b)(2) as long as the final prospectus is filed with the Commission or it will be filed as part of the registration statement.<sup>107</sup> Rule 172 applies only to final prospectuses and not to other documents.<sup>108</sup> Rule 173 requires a notice stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172.<sup>109</sup>

Currently, affected funds are specifically excluded from the issuers that may rely on these rules.<sup>110</sup> The BDC Act directs us to remove this exclusion for BDCs.<sup>111</sup> To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we propose to amend rules 172 and 173 to remove the exclusion for offerings by affected funds.<sup>112</sup>

<sup>105</sup> 15 U.S.C. 77e(b)(2).

<sup>106</sup> 17 CFR 230.172; *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44783.

<sup>107</sup> *See id.* In the event that the issuer fails to file such a prospectus in a timely manner, the issuer must file the prospectus as soon as practicable thereafter. 17 CFR 230.172(c)(3); *see also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44784 (summarizing the effect of this "cure" provision).

<sup>108</sup> *Id.* at 44784.

<sup>109</sup> 17 CFR 230.173. This notification enables investors to "trace" their purchases of securities for purposes of asserting their rights under the liability provisions of the federal securities laws. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44784. Rule 173(d) provides that a purchaser who receives a notification may request a copy of the final prospectus. We are proposing a conforming change to current Item 34.6 of Form N-2, under which funds currently undertake to provide an SAI upon request, to also require an affected fund to undertake to provide a prospectus upon request. *See* proposed Item 34.8 of Form N-2.

<sup>110</sup> *See* rule 172(d)(1)–(2) under the Securities Act [17 CFR 230.172(d)(1)–(2)]; rule 173(f)(2)–(3) under the Securities Act [17 CFR 230.173(f)(2)–(3)].

<sup>111</sup> Section 803(b)(2)(L) of the BDC Act; *see also* section 509(a) of Registered CEF Act (requiring parity of securities offering rules with operating companies for listed registered CEFs and interval funds).

<sup>112</sup> *See* proposed rule 172(d) under the Securities Act; proposed rule 173(f) under the Securities Act.

We request comment on the proposed revisions to the final prospectus delivery rules.

- Are the proposed revisions to rules 172 and 173 appropriately tailored to affected funds? Should we add additional conditions to reliance on rule 172 for some or all affected funds? If so, which ones and why? For example, should we limit the availability of rule 172 only to affected funds that have timely filed all reports and other materials required under the Exchange Act and/or Investment Company Act for a certain period of time prior to reliance on the rule? As another example, should we limit the availability of rule 172 only to seasoned funds that file a short-form registration statement on Form N-2, or to funds that qualify for WKSI status?

#### E. Communications Reforms

##### 1. Offering Communications

The Securities Act restricts the types of offering communications that issuers or other parties subject to the Act's provisions may use in connection with a registered public offering.<sup>113</sup> These provisions, which we refer to as the "gun-jumping provisions," were designed to make the statutorily mandated prospectus the primary means for investors to obtain information regarding a registered securities offering.<sup>114</sup> Accordingly, unless otherwise permitted:

- Before an issuer files a registration statement, all offers, in whatever form, are prohibited;<sup>115</sup>
- After the issuer files a registration statement but before it has become effective, the only written offers that are permitted are those made using a preliminary prospectus that meets the requirements of section 10 of the Securities Act, which must be filed with the Commission;<sup>116</sup> and
- Even after the registration statement is declared effective, offering participants still may make written offers only through a statutory

<sup>113</sup> Unless otherwise noted, offering communications generally refer to written communications. Rule 405 provides that "[e]xcept as otherwise specifically provided or the context otherwise requires, a written communication is any communication that is written, printed, a radio or television broadcast, or a graphic communication as defined in [rule 405]." 17 CFR 230.405.

<sup>114</sup> *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44731.

<sup>115</sup> *See* Securities Act section 5(c) [15 U.S.C. 77e(c)].

<sup>116</sup> This is because after the filing of the registration statement but before its effectiveness, offers made in writing (including electronically), by radio, or by television are limited to a "statutory prospectus" that conforms to the information requirements of Securities Act section 10. *See* Securities Act section 5(b)(1) [15 U.S.C. 77e(b)(1)] and Securities Act section 10 [15 U.S.C. 77j].

<sup>104</sup> 15 U.S.C. 77j(a).

prospectus, except that they may use additional written offering materials if a final prospectus that meets the requirements of Securities Act section 10(a) is sent or given prior to or with those materials.<sup>117</sup>

The Commission has previously adopted rules that provide operating companies and other parties (such as underwriters) increased flexibility in their communications as compared to the limitations described above.<sup>118</sup> The Commission adopted these rules, which we refer to as the “communications rules,” because the Commission believed that investors and the market could benefit from access to greater communications under conditions that preserve important investor protections. These communication rules, however, are generally not available to affected funds, which are subject to a separate framework governing communications with investors.<sup>119</sup>

The BDC Act directs us to allow BDCs to use the same communications rules available to operating companies, generally by removing a BDC from the list of issuers that are ineligible for the exemptions provided by these rules.<sup>120</sup> To implement the BDC Act, and to provide parity for registered CEFs consistent with the Registered CEF Act, we propose to remove the exclusions for affected funds from the following rules and to make other conforming changes.<sup>121</sup> These proposed amendments would:

- Permit affected funds to use certain communications prescribed by rule 134 to publish factual information about the issuer or the offering, including “tombstone ads.”<sup>122</sup>

- Permit affected funds to rely on rule 163A, which provides issuers a bright-line time period, ending 30 days prior to filing a registration statement, during which they may communicate without risk of violating the gun-jumping provisions.<sup>123</sup>

- Permit affected funds that are reporting companies to rely on rule 168 to publish or disseminate regularly released factual business information and forward-looking information at any time, including around the time of a registered offering.<sup>124</sup> Rule 169 would also permit affected funds’ continued publication or dissemination of regularly released factual business information that is intended for use by persons other than in their capacity as

(removing references to BDCs and limiting the rules’ exclusion of registered investment companies from the safe harbor to exclude registered funds other than registered CEFs).

*See also* conforming amendments to proposed rule 168 (proposing to add to paragraphs (b)(1) and (2) references to the Investment Company Act to parallel current references to the Exchange Act to provide that forward-looking information and factual business information may be included in materials filed under the Investment Company Act); proposed rule 433 (proposing to add to paragraphs (a)(1)(i) and (iv) references to registration statements filed on Form N-2 under proposed General Instruction A.2 to parallel current references to Form S-3; proposing to add to paragraph (c)(1)(ii) a reference to reports filed under section 30 of the Investment Company Act as reports with which a free-writing prospectus may not conflict). *See also* proposed rule 156(d), *infra* footnote 124.

<sup>122</sup> Rule 134 generally provides that the terms “prospectus” as defined in section 2(a)(10) of the Securities Act or “free writing prospectus” as defined in Rule 405 shall not include a communication limited to the statements required or permitted by the rule, provided that the rule 134 communications are published or transmitted to any person only after a registration statement has been filed that includes a prospectus satisfying the requirement of section 10 of the Securities Act, except as otherwise provided in the rule.

<sup>123</sup> Rule 163A provides that a communication that meets the rule’s conditions is not an “offer” for purposes of Securities Act section 5(c). The Commission has explained that, because rule 163A provides a safe harbor from the application of Securities Act section 5(c), it necessarily applies only prior to the filing of a registration statement. This exclusion will thus not apply to issuers offering securities off a shelf registration statement on file, whether or not effective, as the prohibition in section 5(c) does not apply to the offering of the securities covered by such shelf registration statement. *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.155.

<sup>124</sup> Rule 168 is a safe harbor from the definition of “prospectus” in Securities Act section 2(a)(10) and, therefore, prevents the application of the prohibition in Securities Act section 5(b)(1) on the use of a prospectus that is not a statutory prospectus. Rule 168 also is a safe harbor from the prohibitions on pre-filing “offers” in Securities Act section 5(c).

investors or potential investors.<sup>125</sup> We also are proposing to amend rule 156 to state that nothing in that rule may be construed to prevent an affected fund from qualifying for an exemption under rules 168 or 169.<sup>126</sup> The contents of any rule 168 or 169 communication would remain subject to the anti-fraud provisions of the federal securities laws.

- Permit affected funds to rely on rules 164 and 433 to use a “free writing prospectus.”<sup>127</sup>

- Permit affected funds that are WKSIs to engage at any time in oral and written communications, including use at any time of a free writing prospectus (before or after a registration statement is filed), subject to the same conditions applicable to other WKSIs.<sup>128</sup>

Investment company communications currently are subject to rule 482 under the Securities Act. Rule 482 communications, or “ads,” can only be used by a fund that is selling or is proposing to sell its securities pursuant to a filed registration statement.<sup>129</sup> Some of the communications rules we propose to amend, in contrast, permit an issuer to communicate before it has filed a registration statement. In addition, a rule 482 ad, like the free-writing prospectuses that we propose to permit affected funds to use, is a prospectus subject to prospectus liability under section 12 of the Securities Act. Some

<sup>125</sup> Rule 169 is also a safe harbor from the definition of “prospectus” in Securities Act section 2(a)(10).

<sup>126</sup> *See* proposed rule 156(d); section 803(b)(2)(G) of the BDC Act; section 509(a) of Registered CEF Act.

<sup>127</sup> Rules 164 and 433 provide that a free writing prospectus is a permitted prospectus for purposes of section 10(b) of the Securities Act and can be used without violating section 5(b)(1) of the Securities Act only after a registration statement related to the offering has been filed. [17 CFR 230.164 and 17 CFR 230.433]. *See also* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44744. Rule 433(a) further provides that a free writing prospectus is a prospectus permitted under section 10(b) for purposes of sections 2(a)(10) and 5(b)(2) of the Securities Act.

<sup>128</sup> A WKSI can: (1) Rely on the bright-line time period provided by rule 163A for communications made more than 30 days before a registration statement is filed and that do not reference a securities offering that is or will be the subject of a registration statement; (2) subject to specified conditions, rely on the exemption in rule 163 from the prohibition on offers before the filing of a registration statement to engage in written or oral communications, including use at any time of a free writing prospectus, made by or on behalf of eligible WKSIs; (3) disseminate regularly released factual and forward-looking information at any time, including around the time of a registered offering, in reliance on rule 168; (4) issue a broader category of routine communications set forth in rule 134 regarding issuers, offerings, and procedural matters, that are excluded from the definition of “prospectus,” and (5) use a free writing prospectus after a registration statement is filed in reliance on rules 164 and 433.

<sup>129</sup> 17 CFR 230.482; *see also* 17 CFR 230.497(i).

<sup>117</sup> *See* Securities Act section 2(a)(10) [15 U.S.C. 77b(a)(10)] and section 5(b)(1) [15 U.S.C. 77e(b)(1)].

<sup>118</sup> *See, e.g.,* Securities Offering Reform Adopting Release, *supra* footnote 5, at 44731. *See also* rules 134 [17 CFR 230.134], 138 [17 CFR 203.138], 139 [17 CFR 230.139], 156 [17 CFR 230.156], 163 [17 CFR 230.163], 163A [17 CFR 230.163A], 164 [17 CFR 230.164], 168 [17 CFR 230.168], 169 [17 CFR 230.169], and 433 [17 CFR 230.433].

<sup>119</sup> *See* Securities Offering Reform Adopting Release, *supra* footnote 5, at n.115 and accompanying text. Certain of the communications rules expressly exclude registered investment companies and BDCs from the types of issuers that may rely on them. *See, e.g.,* rules 134(g) [17 CFR 230.134(g)], 163(b)(3)(ii)–(iii) [17 CFR 230.163(b)(3)(ii)–(iii)], 163A(b)(4)(i)–(ii) [17 CFR 230.163A(b)(4)(i)–(ii)], 164(f) [17 CFR 230.164(f)], 168(d)(3) [17 CFR 230.168(d)(3)], and 169(d)(4) [17 CFR 230.169(d)(4)]. Other communications rules, such as rule 139, do not expressly exclude registered investment companies and BDCs but include conditions that can make them unavailable for affected funds. *See also* CEFRR Adopting Release, *supra* footnote 98 at 64183 (adopting new rule 139b which covers a broker-dealers’ distribution of research reports concerning “covered investment funds,” which includes registered investment companies and BDCs).

<sup>120</sup> *See* section 803(b)(2)(B)–(E) and 803(b)(2)(G)–(I) of the BDC Act, *supra* footnote 8. *See also* section 509(a) of the Registered CEF Act, *supra* footnote 11 (requiring parity of securities offering rules with operating companies for listed registered CEFs and interval funds).

<sup>121</sup> *See* proposed rules 134(g), 163(b)(3), 163A(b)(4), 164(f), 168(d)(3), and 169(d)(4).

communications rules we propose to extend to affected funds, however, deem permissible communications not to be prospectuses, such as rule 134 communications. The proposed amendments to the communications rules would therefore provide incremental flexibility to affected funds in their communications. Funds would have additional flexibility to communicate before filing a registration statement, and they would have some additional flexibility in using communications that are not subject to prospectus liability under section 12 of the Securities Act. Affected funds would be permitted to take advantage of this additional flexibility or to continue to rely on rule 482 and other rules currently applicable to investment company communications.

We request comment on the proposed amendments to the communication rules:

- Are there other changes we should make to the communication rules to permit affected fund communications under those rules? Which changes and why?
- Are there changes we should make, or guidance we should provide, regarding the application of the conditions in the communication rules to affected fund communications?
- Are there any changes we should make to rule 482 regarding the communications that affected funds can make using the rule? Which provisions and why? Should we include any standardized performance presentation requirements for affected funds in rule 482? If so, should they differ in any way from open-end funds' performance presentation requirements already required by rule 482? Rather than or in addition to any changes to rule 482, should we amend the communications rules to require that any affected fund communication, such as a free writing prospectus, that contains performance information must present that information in accordance with standardized presentation requirements? If so, should these standardized presentation requirements be the same as those that are included in rule 482, replicate the instructions to Item 4.1.g set forth in Form N-2,<sup>130</sup> or

<sup>130</sup> See, e.g., Securities Act rule 139b(a)(3) [17 CFR 230.139b(a)(3)] requiring that the performance of certain covered investment funds, including registered CEFs, to be presented in accordance with certain standardized presentation requirements. Rule 139b requires that a registered CEF's performance be presented in accordance with the instructions to Item 4.1.g of Form N-2. *Id.* Other historical measures of fund performance are also permitted, so long as the other measures are set out with no greater prominence. *Id.*

differ from either of these sets of requirements in any way?

- As discussed above, rules 163, 163A, 168, and 169 all permit issuers to engage in specified communications prior to, or during, the filing of a registration statement. Would affected funds rely on these rules, as proposed to be amended, in practice? If so, what types of communications would affected funds make in reliance on these rules? Are there any additional changes to these rules that we should make to tailor them to affected fund communications?

- Rule 134 deems certain permitted communications not to be prospectuses. Should we make any additional changes to tailor this rule to affected fund communications? For example, should we explicitly include the fund's investment adviser as permissible information to disclose in paragraph (a) of rule 134? Should we expand rule 134(a)(3) to include the business of affected funds, or is 134(a)(3)(iv) sufficient?<sup>131</sup> Why or why not? What other information specific to affected funds should we permit that would be consistent with the intent of rule 134 communications?

- In 2003, the Commission removed certain investment-company specific provisions from rule 134 on the basis that rule 134 was unnecessary for investment company communications in light of the amendments we adopted to rule 482 at that time.<sup>132</sup> For example, prior rule 134 permitted investment companies to provide a brief indication of the general type of business of the issuer, but with specified limitations tailored to investment companies.<sup>133</sup> Should we restore some or all of the pre-2003 investment company related provisions of rule 134? Which provisions and why? When the Commission eliminated these provisions in rule 134, it reasoned that the standard of liability that attaches to a fund advertisement should not depend on the content of the advertisement and that it did not believe exactly the same content should be subject to different liability standards depending on whether that content is included in a

<sup>131</sup> Rule 134(a)(3) currently permits an issuer to provide a brief indication of the general type of business it engages in, but restricts that information according to the type of business involved. The rule provides specific requirements for certain types of companies (e.g., manufacturing companies), as well as a catch-all provision in paragraph (a)(3)(iv) for companies in a business that is not specifically enumerated.

<sup>132</sup> See Amendments to Investment Company Advertising Rules, Securities Act Release No. 8294 (Oct. 3, 2003) [68 FR 57760 (Oct. 6, 2003)] ("Advertising Rules Amendments Adopting Release").

<sup>133</sup> See prior rule 134(a)(3)(iii).

rule 134 advertisement or a rule 482 advertisement.<sup>134</sup> How should we balance these considerations in considering any further changes to rule 134?

- Rules 164 and 433 allow issuers to communicate through a free writing prospectus after an issuer files a registration statement. What types of communications would an affected fund make in reliance on rules 164 and 433? How, if at all, would they differ from communications affected funds currently make under rule 482? Should we provide for an anti-staleness provision similar to rule 482(g)<sup>135</sup> of the Securities Act with respect to any discussion of performance by affected funds in a free writing prospectus? Why or why not?

## 2. Broker-Dealer Research Reports

The BDC Act also directs us to amend rules 138 and 139 to specifically include a BDC as an issuer to which those rules apply, and the Registered CEF Act directs us to allow certain registered CEFs to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act.<sup>136</sup> Rule 138 permits a broker-dealer participating in a distribution of an issuer's common stock and similar securities to publish or distribute research about that issuer's fixed income securities, and vice versa, if it publishes or distributes that research in the regular course of its business.<sup>137</sup> Although rule 138 does not currently exclude affected funds from coverage, it does include references to Form S-3 but not Form N-2. We therefore propose to amend the rule's references to shelf registration statements filed on Form S-3 to include a parallel reference to a

<sup>134</sup> See Advertising Rules Amendments Adopting Release, *supra* footnote 132, at 57761-6262.

<sup>135</sup> Rule 482(g) [17 CFR 230.482(g)] is an anti-staleness provision providing in part that "[a]ll performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed. . . ."

<sup>136</sup> See section 803(b)(2)(F) of the BDC Act, *supra* footnote 8. See also section 509(a) of the Registered CEF Act, *supra* footnote 11.

<sup>137</sup> See 17 CFR 230.138. Specifically, a research report published or distributed by a broker or dealer is not considered an offer for sale or an offer to sell a security that is the subject of an offering for purposes of section 2(a)(10) and 5(c) of the Securities Act even if the broker or dealer participates in the distribution of the issuer's securities, so long as the research report relates to securities that are not equivalent, as defined by the rule, to the securities being distributed. See rule 138(a). A broker-dealer's publication or distribution of a research report in reliance on rule 138 would therefore be deemed not to constitute an offer that otherwise could be a non-conforming prospect in violation of section 5 of the Securities Act.

registration statement filed on Form N-2 under the proposed short-form registration instruction.

Rule 138 also currently provides that an issuer covered in a research report published in reliance on the rule must be required to file reports, and have filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports), on Forms 10-K and 10-Q.<sup>138</sup> This requirement is designed to ensure that all reporting issuers are current in their periodic reports at the time a broker-dealer relies on the exemption.<sup>139</sup> Because registered CEFs do not file the periodic reports currently specified in rule 138, we propose to include parallel references to the reports that registered CEFs are required to file, *i.e.*, reports on Forms N-CSR, N-Q,<sup>140</sup> N-CEN, and N-PORT.<sup>141</sup>

We are not, however, proposing any changes to rule 139. That rule provides a safe harbor for a broker-dealer's publication or distribution of research reports where the broker-dealer is participating in the registered offering of the issuer's securities and, unlike rule 138, permits the research report to cover any class of the issuer's securities.

The Commission recently adopted new Securities Act rule 139b to implement the Fair Access to Investment Research Act of 2017 (the "FAIR Act").<sup>142</sup> The FAIR Act directed that the Commission extend rule 139 to cover broker-dealers' publication or distribution of "covered investment fund research reports." These include research reports about affected funds.<sup>143</sup>

Rule 139b includes specific conditions mandated by Congress for covered investment fund research

reports.<sup>144</sup> For example, rule 139b excludes from the rule's safe harbor research reports published or distributed by the covered investment fund itself, any affiliate of the covered investment fund, or any broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.<sup>145</sup> We believe that rule 139b satisfies the directives of the BDC Act and Registered CEF Act by extending rule 139's safe harbor to research reports on BDCs and registered CEFs and is consistent with Congress's core objective regarding research reports covering these funds. Moreover, if we were to amend rule 139 to cover research reports on BDCs, or on affected funds generally, exactly the same conduct would be subject to different standards based on the rule a broker-dealer chose to use. We believe it is more appropriate to provide a consistent approach for affected fund research reports under rule 139b.

We request comment on the proposed amendments to the research report rules:

- Would the proposed amendments to rule 138 effectively implement the BDC Act and the Registered CEF Act? Have we effectively implemented the BDC Act and Registered CEF Act with respect to the research report rules?
- Do commenters agree that amendments to rule 139 are not necessary or appropriate in light of rule 139b? Why or why not? If not, how should we appropriately address affected funds in light of the specific directives in the FAIR Act regarding covered investment fund research reports? If we were to amend rule 139 to include either or both of BDCs and registered CEFs, should we remove them from the scope of "covered investment funds" as defined in rule 139b to avoid exactly the same activity being subject to different standards based on the rule that a broker-dealer chose to use?

## F. Other Proposed Rule Amendments

### 1. Rule 418 Supplemental Information

Rule 418 provides that the Commission or its staff may request supplemental information concerning the registrant, the registration statement, the distribution of the securities, market activities, and underwriters' activities. The rule provides a non-exhaustive list of the types of items that registrants

should be prepared to furnish to the Commission or staff promptly upon request.<sup>146</sup> The BDC Act requires us to amend rule 418 to provide that a BDC that would otherwise meet the eligibility requirements of Form S-3 is exempt from rule 418(a)(3).<sup>147</sup> Paragraph (a)(3) of rule 418 generally requires registrants to be prepared to furnish recent engineering, management, or similar reports or memoranda relating to broad aspects of the business, operations, or products of the registrant. To implement the BDC Act, and to provide parity for affected registered CEFs consistent with the Registered CEF Act, we are proposing to amend rule 418(a)(3) to provide that, in addition to registrants that are eligible to use Form S-3, registrants that are eligible to file a short-form registration statement on Form N-2 are excepted from the requirement to furnish this information under rule 418.<sup>148</sup>

### 2. Amendments to Incorporation by Reference Into Proxy Statements

Schedule 14A under the Exchange Act specifies the information that a registrant must include in a proxy statement. Item 13 of Schedule 14A generally requires a registrant to furnish financial statements and other information for proxy statements containing specific proposals.<sup>149</sup> However, a registrant that meets the

<sup>146</sup> Under rule 418, registrants furnish supplemental information. They are not required to file the information with their registration statement, and the supplemental information does not become part of the registration statement. See 17 CFR 230.418(b). Supplemental information that is "furnished" rather than "filed" does not subject a registrant to certain liabilities under the federal securities laws. See, e.g., section 11 of the Securities Act [15 U.S.C. 77k] (establishing liability for material untrue statements or omissions in registration statements); see also *infra* footnote 263.

<sup>147</sup> Section 803(b)(2)(M) of the BDC Act.

<sup>148</sup> Under section 31(b)(1) of the Investment Company Act, all records that a registered investment company and certain majority-owned subsidiaries are required to maintain and preserve under section 31(a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. For purposes of these examinations, any subject person must make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request. See 15 U.S.C. 80a-30(b). Section 64 of the Investment Company Act generally provides that section 31 shall apply to a BDC to the same extent as if it were a registered CEF. See 15 U.S.C. 80a-63. See also rule 31a-1 under the Investment Company Act [17 CFR 270.31a-1] (Commission books and records rules); rule 31a-2 [17 CFR 270.31a-2] (same).

<sup>149</sup> Item 13 applies to proxy statements seeking security holder approval to authorize, issue, modify, or exchange securities as described in Items 11 or 12 of Schedule 14A.

<sup>138</sup> See rule 138(a)(2)(i) [17 CFR 230.138(a)(2)(i)].

<sup>139</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44763 (amending rule 138 to require that all issuers covered in a research report under rule 138, and not just those that file on Forms S-3 or F-3, be current and timely in filing their periodic reports).

<sup>140</sup> See *supra* footnotes 41 and 44 (Form N-Q will be rescinded on May 1, 2020). See also *infra* Part VIII (instruction 6 under Text of Proposed Rules and Amendments).

<sup>141</sup> Reports on Form N-PORT for each month will be filed with the Commission on a quarterly basis. In addition, only information reported for the third month of each fund's fiscal quarter on Form N-PORT will be publicly available (60 days after the end of the fiscal quarter). See N-PORT Modification Release, *supra* footnote 41.

<sup>142</sup> See Fair Access to Investment Research Act of 2017, Public Law 115-66, 131 Stat. 1196 (2017). We implemented the FAIR Act's directives to amend rule 139 by adopting new rule 139b. See also CEFRR Adopting Release, *supra* footnote 98.

<sup>143</sup> 17 CFR 230.139b. See also CEFRR Adopting Release, *supra* footnote 98, at 64183 (providing that under rule 139b, the term "covered investment fund" includes, among other things, registered investment companies and BDCs).

<sup>144</sup> See section 2(f)(2)(A) of the FAIR Act, *supra* footnote 142.

<sup>145</sup> See Covered Investment Fund Research Reports, *supra* footnote 98. See also section 2(f)(3) of the FAIR Act, *supra* footnote 142.

requirements of Form S-3—as defined in Note E to the Schedule—generally may incorporate this information by reference to previously-filed documents without delivering those documents to security holders with the proxy statement. The BDC Act directs us to amend Item 13(b)(1) of Schedule 14A to include as an issuer to which Item 13(b)(1) applies a BDC that would otherwise meet the requirements of Note E of the Schedule.<sup>150</sup> The Registered CEF Act requires us to provide certain registered CEFs with the same flexibility under the proxy rules, subject to conditions that we determine are appropriate, as is available to other issuers that are required to file reports under section 13 or section 15(d) of the Exchange Act.<sup>151</sup>

We are proposing to amend Item 13(b)(1) and Note E to Schedule 14A so that affected funds that meet the requirements of the proposed short-form registration instruction would have the same treatment under this item as registrants that meet the requirements of Form S-3. Specifically, we are proposing to extend this item to registrants that meet the requirements of the proposed short-form registration instruction and to describe in Note E when a registrant will be deemed to meet the requirements of this new instruction for these purposes. The proposed description in Note E would track the existing description of when a registrant meets the requirements of Form S-3 by, for example, applying the same general transaction limitations to affected funds that currently apply to registrants that meet the requirements of Form S-3.<sup>152</sup>

We request comment on our proposed amendments to rule 418 and Schedule 14A:

- Do our proposed amendments to Schedule 14A provide affected funds with comparable treatment to operating companies? If not, why not? Are other modifications to our proxy rules needed to treat affected funds in the same manner as other issuers that are required to file reports under section 13 or section 15(d) of the Exchange Act?
- Should our proposed amendments to rule 418 extend to registered CEFs, as we have proposed?

#### *G. New Registration Fee Payment Method for Interval Funds*

We are proposing a modernized approach to registration fee payment that would require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today. In general, issuers today—including interval funds—are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement.<sup>153</sup> This means that they pay registration fees at the time they register the securities, regardless of when (or if) they sell them.

Today, WKSIs using automatic shelf registration statements have additional flexibility to pay filing fees at or prior to the time of a securities offering.<sup>154</sup> As a result, these filers may defer payment until a future takedown of shares off a shelf registration statement. Affected funds that become WKSIs as a result of our proposed amendments would also gain that flexibility, but other affected funds would not.<sup>155</sup> WKSIs are not the only types of issuers that currently can pay registration fees after they file their registration statements. The Investment Company Act provides that many registered investment companies, such as mutual funds and ETFs, register an indefinite amount of securities upon their registration statements' effectiveness.<sup>156</sup> These funds pay registration fees based on their net issuance of shares, no later than 90 days after the fund's fiscal year end.<sup>157</sup> These

issuers must file information about the computation of this registration fee and other information on Form 24F-2 under the Investment Company Act when paying the fee.<sup>158</sup>

Interval funds, like other affected funds, are not currently permitted to pay registration fees on this same annual "net" basis, and must pay the registration fee at the time of filing the registration statement. However, we believe that interval funds would benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs, and that this approach is appropriate in light of interval funds' operations. In particular, interval funds—like mutual funds and unlike other affected funds—routinely repurchase shares at net asset value and are required to periodically offer to repurchase their shares.<sup>159</sup> When the Commission adopted rule 23c-3, which permits the operation of interval funds, it noted that the rule was intended to allow them to operate in certain ways that were traditionally available only to open-end funds.<sup>160</sup> We believe that paying their registration fees in the same manner as open-end funds would yield similar operational benefits that open-end funds enjoy today (e.g., by computing registration fees due on an annual net basis). Additionally, this approach would avoid the possibility that an interval fund would inadvertently sell more shares than it had registered and would not require the interval fund to periodically register new shares. Accordingly, we propose to amend rules 23c-3 and 24f-2 so that interval funds would pay registration fees on this same annual net basis.<sup>161</sup>

these funds pay fees on a net basis, based upon the sales price for securities sold during the fiscal year and reduced based on the price of shares redeemed or repurchased that year.

<sup>158</sup> 17 CFR 274.24.

<sup>159</sup> An interval fund must have a fundamental policy regarding its repurchase offers that can be changed only by a shareholder vote. See 17 CFR 270.23c-3(b)(2)(i).

<sup>160</sup> Registration Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (Apr. 7, 1993) [58 FR 19330, 19330 (Apr. 14, 1993)].

<sup>161</sup> Specifically, the amendments to rule 23c-3 would provide that an interval fund would be deemed to have registered an indefinite amount of securities under section 24(f) upon the effective date of its registration statement. Proposed rule 23c-3(e). We also propose to make a conforming amendment to rule 24f-2 so that interval funds would pay their registration fees on the same annual net basis as mutual funds and other open-end funds do. Proposed rule 24f-2(a). We preliminarily believe that these actions are necessary or appropriate in the public interest and consistent with the protection of investors. See section 28 of the Securities Act [15 U.S.C. 77z-3]; section 6(c) of the Investment Company Act [15 U.S.C. 80a-6(c)]. As discussed in detail below, we

Continued

<sup>150</sup> Section 803(b)(2)(N) of the BDC Act.

<sup>151</sup> Section 509(a) of the Registered CEF Act.

<sup>152</sup> Note E states that a registrant meets the requirements of Form S-3 for purposes of Item 13 of Schedule 14A if, among other things, it meets certain of the transaction requirements identified in General Instruction I.B or I.C of Form S-3, subject to certain limitations with respect to transactions described in General Instruction I.B.2 of Form S-3. For instance, a registrant relying on the transaction requirements in General Instruction I.B.2 of Form S-3 (e.g., a registrant that has issued at least \$1 billion in non-convertible securities, other than common equity, in registered primary offerings for cash over the prior 3 years) would only qualify for incorporation by reference under Item 13 of Schedule 14A if the registrant is seeking shareholder approval to authorize, issue, modify, or exchange non-convertible debt or preferred securities meeting the requirements of General Instruction I.B.2. Further, certain transaction requirements in General Instruction I.B of Form S-3, including those in General Instruction I.B.3, I.B.4, and I.B.6, are not covered by Note E. Based on affected funds' current practices, we understand that affected funds rarely make the types of proposals covered by Item 13 of Schedule 14A (i.e., to issue, modify, or exchange its securities) and may be less likely than operating companies to rely on the transaction requirements of General Instruction

I.B or I.C of Form S-3 that are subject to limitations in Note E. However, to provide parity, we propose to apply to affected funds the same standards that apply to operating companies in our proposed amendments to Note E of Schedule 14A.

<sup>153</sup> Section 6(b)(1) of the Securities Act [15 U.S.C. 77f(b)(1)].

<sup>154</sup> See *supra* footnote 62; see also Securities Offering Reform Adopting Release, *supra* footnote 5, at 44780. This arrangement is commonly known as "pay as you go." *Id.*

<sup>155</sup> See *supra* Part II.C.

<sup>156</sup> See section 24(f)(1) of the Investment Company Act [15 U.S.C. 80a-24(f)(1)].

<sup>157</sup> See section 24(f)(2) of the Investment Company Act [15 U.S.C. 80a-24(f)(2)]. Specifically,

We request comment on these proposed amendments:

- Should we amend our rules to deem an interval fund to have registered an indefinite amount of securities upon effectiveness of its registration statement, as proposed? Should we require interval funds to pay registration fees on an annual net basis by filing on Form 24F-2? Why or why not?
- Should these changes be tailored to interval funds in any way? Why or why not? If so, how?
- Should we tailor Form 24F-2 to interval funds in any way? Why or why not? If so, how?
- Instead of requiring interval funds to pay registration fees on an annual net basis as proposed, should we permit interval funds that are not WKSIs to make registration fee payments on a pay-as-you-go basis, as WKSIs are permitted to do today? Why or why not?
- Should we permit additional categories of issuers to pay registration statement fees on an annual net basis as under rule 24f-2 (or on a pay-as-you-go basis)? For example, should tender offer funds be permitted to pay registration fees in this manner? Are funds that have historically made periodic tender offers voluntarily—but for which these offers are not a fundamental policy—sufficiently similar to interval funds or open-end funds such that their paying registration fees under rule 24f-2 would be appropriate? If we were to permit tender offer funds to use this payment method, how would we define an eligible tender offer fund?
- Should interval funds be permitted to choose whether to pay registration fees on either an annual net basis (or on a pay-as-you-go basis) or in the current manner, at the time of registration? Alternatively, should *all* interval funds be required to pay registration fees on an annual net basis, as we propose and as open-end funds are required to do today?

#### H. Disclosure and Reporting Parity Proposals

We are proposing amendments to our rules and forms intended to tailor the disclosure and regulatory framework for affected funds in light of our proposed amendments to the offering rules applicable to them. Many of these proposed amendments are not expressly required by the BDC Act or the Registered CEF Act but we believe would further the respective Acts' goals of providing regulatory parity to affected

are also proposing to modernize the computation and payment of registration fees subject to section 24(f) by requiring that submissions on Form 24F-2 be made in a structured data format. *See infra* Part II.H.1.d.

funds with otherwise similarly-situated issuers.<sup>162</sup> Some of the proposed amendments also reflect that, as the Registered CEF Act requires, we have considered the availability of information to investors in connection with the proposed amendments.<sup>163</sup> As discussed in detail below, these proposed amendments include structured data requirements; new annual and current reporting requirements; amendments to provide all affected funds additional flexibility to incorporate information by reference; and proposed enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.

#### 1. Structured Data Requirements

We are proposing certain new structured data reporting requirements for registered CEFs and BDCs. In particular, and as discussed in detail below, we are proposing to require BDCs, like operating companies, to submit financial statement information using Inline XBRL format; to require that registered CEFs and BDCs include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; to require that certain information required in an affected fund's prospectus be tagged using Inline XBRL format; and to require that filings on Form 24F-2 be submitted in Extensible Markup Language ("XML") format.

#### a. Inline XBRL Requirements for Financial Statements and Notes to Financial Statements

In 2009, the Commission adopted rules requiring operating companies to submit the information from the financial statements accompanying their registration statements and periodic and current reports in a structured, machine-readable format using XBRL format.<sup>164</sup>

<sup>162</sup> For example, regulatory parity could mitigate any competitive disparities between affected funds and other issuers. It also could help investors in affected funds by providing them investor protections that are currently provided to investors in similarly-situated issuers. *See, e.g., infra* discussion in paragraphs accompanying footnotes 209–215.

<sup>163</sup> Section 509(a) of the Registered CEF Act (providing, in part, that any action that the Commission takes pursuant to this subsection shall consider the availability of information to investors, including what disclosures constitute adequate information to be designated as a "well-known seasoned issuer").

<sup>164</sup> Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] ("2009 Financial Statement Information Adopting Release") (requiring submission of an Interactive Data File to the Commission in exhibits to such reports); *see also* Securities Act Release No. 9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)].

These requirements were intended to make financial information easier for investors to analyze and to assist in automating regulatory filings and business information processing.<sup>165</sup> Last year, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL format to reduce the time and effort associated with preparing XBRL filings, simplify the review process for filers, and improve the quality and usability of XBRL data for investors.<sup>166</sup> The Commission has also adopted structured data reporting requirements for most registered investment companies, including, for example, prospectus risk/return summary information for mutual funds and ETFs,<sup>167</sup> which are also required to submit this information using Inline XBRL format.<sup>168</sup> The Commission also adopted requirements for most registered investment companies to file monthly reporting of portfolio securities on a quarterly basis,<sup>169</sup> as well as annual reporting of certain "census" information,<sup>170</sup> in a structured data format.<sup>171</sup> Most recently the Commission proposed to require the use of Inline XBRL for the submission of certain statutory prospectus disclosures for variable annuity and variable life insurance contracts.<sup>172</sup> BDCs, however, are currently subject to neither the structured data reporting requirements for operating companies

<sup>165</sup> 2009 Financial Statement Information Adopting Release, *supra* footnote 164, at 6776.

<sup>166</sup> Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)] ("Inline XBRL Adopting Release"). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id.* at 40851.

<sup>167</sup> Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748 (Feb. 19, 2009)].

<sup>168</sup> *See* Inline XBRL Adopting Release, *supra* footnote 166.

<sup>169</sup> Reporting Modernization Release, *supra* footnote 41 (requiring portfolio information on Form N-PORT); N-PORT Modification Release, *supra* footnote 41 (modifying the filing requirements for Form N-PORT); Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] (requiring portfolio information on Form N-MFP).

<sup>170</sup> Reporting Modernization Release, *supra* footnote 41, at 81870 (requiring "census" information on Form N-CEN).

<sup>171</sup> We require reports on these forms to be filed in an XML format that is not Inline XBRL.

<sup>172</sup> Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2018) [83 FR 61730 (Nov. 30, 2018)] ("Variable Contract Summary Prospectus Proposing Release").



nor those for registered investment companies.<sup>173</sup>

We believe that reporting in a structured data format makes financial information easier for investors to analyze and helps automate regulatory filings and business information processing. We further believe that, like investors in operating companies and investors in registered investment companies, BDC investors would—either directly or indirectly through third-party analysis—benefit from the availability of relevant information in a structured data format.<sup>174</sup> Accordingly, we propose to amend Item 601 of Regulation S-K to remove the exclusion for BDCs from the Inline XBRL financial statement tagging requirements.<sup>175</sup> This would subject BDCs to the Inline XBRL financial statement tagging requirements that apply to operating companies, reducing the current disparity between the accessibility of information BDCs provide to the market and the accessibility of information that operating companies provide to the market. Based on our staff's review of BDCs' disclosures and assessment of the XBRL taxonomies' development since they were first adopted in 2009, we believe that relevant XBRL taxonomies are sufficiently well developed for financial statement reporting by BDCs. We therefore believe that applying these taxonomies to BDCs would impose smaller reporting costs and would yield more useful data for investors, Commission staff, and other data users than would requiring BDCs to provide structured financial information by

filing reports on Forms N-PORT or N-CEN using a different technology.

We request comment on the proposed requirement for BDCs to tag financial statement information using Inline XBRL format:

- Should we require BDCs to tag financial statement information in a structured data format? Why or why not? Is Inline XBRL the appropriate format for BDC financial statement information? Why or why not? If another structured data format would be more appropriate, which one, and why?

- Is it appropriate for BDCs to be subject to the same Inline XBRL financial statement information requirements as operating companies, or would it be more appropriate to require them to provide structured data by filing reports on Form N-PORT or Form N-CEN? Why or why not? Would the information that BDCs include in financial statements and that would be tagged in Inline XBRL format under the proposal be more important to BDC investors than the structured data required by Forms N-PORT and N-CEN? Why or why not?

- Should structured financial statement data reporting requirements be tailored to BDCs? If so, how and why?

- Should any subset of BDCs (for example, BDCs that would not be eligible to file a short-form registration statement) be exempt from the proposed structured financial statement data reporting requirement? If so, what subset and why?

- Do commenters agree that the relevant XBRL taxonomies are sufficiently well developed for financial statement reporting by BDCs? Why or why not? What, if any, additions should be made to one or more of the XBRL taxonomies to enhance their suitability for BDC financial statements?

#### b. New Check Boxes and Structured Data Format for Form N-2 Cover Page Information

We are proposing to require all affected funds to tag the data points that appear on the cover page of proposed Form N-2 using Inline XBRL format.<sup>176</sup> We currently require registrants to tag all of the data points on the cover page of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F using Inline XBRL format.<sup>177</sup> We believe extending

this requirement to mandatory tagging of the data points on the cover page of Form N-2 would allow investors, other market participants, and other data users to automate their use of this information. This would enhance their ability to better identify, count, sort, aggregate, compare, and analyze registrants and disclosures to the extent these data points otherwise would be formatted only in HyperText Markup Language (“HTML”). The cover page data points that we propose affected funds to tag would include, for example, the company name, the Act or Acts to which the registration statement relates, and checkboxes relating to the effectiveness of the registration statement.

In addition, we propose to amend Form N-2 to require a checkbox indicating that the registration statement or post-effective amendment filed by a WKSII will become effective upon filing with the Commission under rule 462(e) under the Securities Act.<sup>178</sup> The securities offering reforms of 2005 included a parallel requirement for operating companies' registration statements on Form S-3.<sup>179</sup> A related checkbox would indicate that the registration statement is an automatic shelf registration statement filed by a WKSII to post-effectively register additional securities or classes of securities under rule 413(b) under the Securities Act.<sup>180</sup> We also propose to require a checkbox indicating a fund's reliance on the proposed short-form registration instruction—electing a status that is similar to the use of Form S-3 (rather than Form S-1) in the operating company context. Investors, Commission staff, and other data users can distinguish between registration statements for operating companies based on whether they are filed on Form S-1 or Form S-3. Because affected funds all file their registration

(Oct. 11, 2017) [82 FR 50988, 51023 (Nov. 2, 2017)]; FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10618 (Mar. 20, 2019) (“FAST Act Modernization Adopting Release”).

<sup>178</sup> See proposed cover page of Form N-2.

<sup>179</sup> See Securities Offering Reform Adopting Release, *supra* footnote 2, at 44789.

<sup>180</sup> Rule 413(b) under the Securities Act, which allows a WKSII to file a post-effective amendment to add additional securities or additional classes of securities to an automatic shelf registration statement already in effect, is limited to: (1) Securities of a class different than those registered on the effective automatic shelf registration statement identified as provided in rule 430B(a); or (2) securities of a majority-owned subsidiary that are permitted to be included in an automatic shelf registration statement, provided that the subsidiary and the securities are identified as provided in rule 430B and the subsidiary satisfies the signature requirements of an issuer in the post-effective amendment.

<sup>173</sup> Rule 30b-1 under the Investment Company Act [17 CFR 270.30b-1] (requiring certain registered investment companies, but not BDCs, to file reports on Form N-PORT); rule 30a-1 under the Investment Company Act [17 CFR 270.30a-1] (requiring certain registered investment companies, but not BDCs, to file reports on Form N-CEN); *see also* Reporting Modernization Release, *supra* footnote 41, at 81876 (noting that BDCs are not subject to reporting on Form N-PORT); 2009 Financial Statement Information Adopting Release, *supra* footnote 164, at 6788 (noting that BDCs are not subject to the XBRL financial statement information requirements).

Prior to the adoption of the XBRL requirements in the 2009 Financial Statement Information Adopting Release, which did not apply to BDCs, the one commenter to address their exclusion from the scope of the proposal had opined that the investment management taxonomy was not yet sufficiently developed. *See id.*

<sup>174</sup> Having this information in a structured data format would also enhance our staff's ability to review and analyze BDCs' financial statements.

<sup>175</sup> Compare proposed Item 601(b)(101)(i) of Regulation S-K [17 CFR 229.601(b)(101)(i)] (excludes registered investment companies from financial statement tagging requirements) with current Item 601(b)(101)(i) of Regulation S-K [17 CFR 229.601(b)(101)(i)] (excludes all registrants that prepare financial statements in accordance with Article 6 of Regulation S-X [17 CFR 210.6-01 through 210.6-10]).

<sup>176</sup> See proposed General Instruction H.2.a of Form N-2; proposed rule 405(b)(3) of Regulation S-T. We propose that all of the data points that appear on the cover page of proposed Form N-2, with the exception of the table including information about calculation of the registration fee under the Securities Act, be tagged in Inline XBRL format.

<sup>177</sup> FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10425



statements on Form N-2, a checkbox is necessary to distinguish the type of registration statement being filed. We are also proposing to require checkboxes that would identify characteristics of the fund, including whether it is (1) a registered CEF; (2) a BDC; (3) a registered CEF that operates as an interval fund; (4) qualified to file a short-form registration statement on Form N-2; (5) a WKSI; (6) an emerging growth company;<sup>181</sup> or (7) a registrant that has been registered or regulated under the Investment Company Act for less than 12 calendar months.<sup>182</sup> The checkbox presentation of these characteristics on the cover page will allow investors, Commission staff, and others to more readily identify types of issuers and securities. These checkboxes would be among the data points required to be tagged using Inline XBRL format.

Form N-2 registrants are required to include a table on the form's cover page that includes information about calculation of the fund's registration fee under the Securities Act. We believe that the information in this table would not—unlike the other cover page elements, including the proposed checkboxes—permit data users to distinguish among Form N-2 registrants in a manner that is similar to the way that that operating company registrants currently may be distinguished by their filing form type. Therefore, we are not proposing that affected funds be required to tag this cover page fee table.

We request comment on the proposed Form N-2 cover page information tagging requirement:

- Should we require, as proposed, all information on the cover page of Form N-2, except the table that includes information about the calculation of the fund's registration fee, to be tagged using Inline XBRL format? Are there any other cover page data points that we should not require be tagged in Inline XBRL format? For example, are there any data points where tagging in Inline XBRL format would be duplicative with similar requirements, or where Inline XBRL tagging would serve limited benefit in helping to identify, count, sort, aggregate, compare, and analyze registrants? Should this requirement be

tailored in any way—for example, to particular types of registrants that file on Form N-2 (such as those that are eligible to file a short-form registration statement, and/or WSIs)—and if so, how and why? Should the proposed requirement apply to only to those data points related to affected funds' use of the rules amended by this proposal? Would the costs associated with tagging all of the cover page data points be significantly greater than the costs of tagging only the checkboxes related to use of the proposed short-form registration instruction or the use of an automatic shelf registration? If so, why?

- Is proposed General Instruction H.2 of Form N-2, in conjunction with rule 405 of Regulation S-T as we propose to amend it, sufficiently clear for registrants and other market participants to understand the proposed requirement to tag Form N-2 cover page information in Inline XBRL format? If not, how could we make the requirement clearer?

- Instead of requiring cover page data points to be tagged using Inline XBRL format, should we require this data to be submitted using another format, such as XML? Why or why not? If so, which alternative format would be appropriate, and why? Would the administrative costs vary between formats? If so, which format would be more costly, and why? Would the benefits to users of the information vary between formats? If so, which format would be more beneficial, and why? Should more than one format be permitted? Should the specific format be left unspecified? Would investors and others realize the benefits of reporting in a structured data format if the specific structured data format were unspecified? Why or why not?

- Are there any changes we should make to the proposed amendments to better ensure accurate and consistent tagging? If so, which changes should we make and why?

#### c. Tagging of Prospectus Disclosure Items

We propose to require all affected funds to tag certain information that is required to be included in an affected fund's prospectus using Inline XBRL format.<sup>183</sup> Like mutual funds and ETFs, all affected funds would be required to submit to the Commission using Inline XBRL certain information discussed below in registration statements or post-effective amendments filed on Form N-2<sup>184</sup> and forms of prospectuses filed pursuant to rule 424 under the

Securities Act that include information that varies from the registration statement.<sup>185</sup> A seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag information appearing in Exchange Act reports—such as those on Forms N-CSR, 10-K, or 8-K—if that information is required to be tagged in the fund's prospectus.<sup>186</sup>

We are proposing that affected funds tag the following prospectus disclosure items using Inline XBRL format: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.<sup>187</sup> We believe that these items—which provide important information about a fund's key features, costs, and risks—would be best suited to being tagged in a structured format and be of greatest utility for investors and other data users that seek structured data to analyze and compare funds.

We would require affected funds to tag the Fee Table, which provides detailed information about the fund's costs. We believe that tagging could facilitate analysis of fund costs, and allow investors and other data users to compare the costs of a particular affected fund with the costs of other funds or other investment products, such as mutual funds. We are also proposing to require affected funds to tag the Senior Securities Table, which requires registrants to include information about each of its classes of senior securities, including bank loans. This will facilitate analyses of outstanding senior securities that may bear on the likelihood, frequency, and size of distributions from the fund to its investors. We propose to require tagging of Investment Objectives and Policies, which provides information about the fund's principal portfolio emphasis. We are also proposing to require tagging of Risk Factors to facilitate the aggregation, analysis, and comparison by investors and other data users of information about a fund's risks alongside the fund's features and benefits. We propose to require the tagging of Share Price

<sup>185</sup> See proposed General Instruction H.2.b of Form N-2.

<sup>186</sup> See proposed General Instruction H.2.c of Form N-2.

<sup>187</sup> See proposed General Instructions H.2.b and H.2.c of Form N-2; see also Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, and 10.5 of Form N-2. This information largely parallels similar information contained in the Form N-1A risk/return summary. See Item 2 (Risk/Return Summary: Investment Objectives/Goals), Item 3 (Risk/Return Summary: Fee Table), and Item 4 (Risk/Return Summary: Investments, Risks and Performance) of Form N-1A.

<sup>181</sup> See rule 12b-2 under the Exchange Act [17 CFR 240.12b-2] (defining “emerging growth company”).

<sup>182</sup> We are also proposing to add several other checkboxes to Form N-2 to clarify the purpose of the filing, including a checkbox to indicate that the only securities being registered are being offered pursuant to dividend or interest reinvestment plans, as well as new checkboxes to indicate whether the Form is being filed as a post-effective amendment filed pursuant to Rule 462(c) or Rule 462(d) under the Securities Act.

<sup>183</sup> See proposed General Instruction H.2 of Form N-2; proposed amendments to rule 405 of Regulation S-T.

<sup>184</sup> See proposed General Instruction H.2.a of Form N-2.

Information, as the presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors.<sup>188</sup> We would also require affected funds to tag Capital Stock, Long-Term Debt, and Other Securities to better inform common shareholders how their rights, expenses, and risks are affected when the fund issues other types or classes of securities.

Similar to mutual funds and ETFs under the recently adopted Inline XBRL regime,<sup>189</sup> we would require affected funds to submit “Interactive Data Files” (i.e., machine-readable computer code that presents information in XBRL format) as follows:

- For any registration statements and post-effective amendments, Interactive Data Files must be filed either concurrently with the filing or in a subsequent amendment that is filed on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective;<sup>190</sup>
- for any prospectus filed pursuant to rule 424, Interactive Data Files must be submitted concurrently with the filing;<sup>191</sup> and

- for any Exchange Act report that a seasoned fund filing a short-form registration statement on Form N-2 would have to tag, as discussed above, Interactive Data files must be submitted concurrently with the filing.<sup>192</sup>

We believe this approach will facilitate the timely availability and promote the comparability and utility of important information in a structured data format for investors, other market participants, and other data users, yielding substantial benefits. For data aggregators responding to demand for the data, the availability of the required disclosures in the Inline XBRL format concurrent with filing or before the date of effectiveness would allow them to quickly process and share the data and related analysis with investors.

Therefore, consistent with the approach in the recently adopted Inline XBRL rules for mutual funds and ETFs, we are not proposing to provide affected funds a filing period to submit Interactive Data Files. Affected funds could request temporary and continuing hardship exemptions for the inability to timely file electronically the Interactive Data File.<sup>193</sup>

We request comment generally on the proposed amendments to require the use of Inline XBRL format for certain Form N-2 disclosure items, and specifically on the following issues:

- Should we make the submission of structured data in the Inline XBRL format mandatory for affected funds, as proposed? Should the requirements for affected funds generally mirror the recently-adopted Inline XBRL requirements for mutual funds and ETFs, as proposed? Should we take a different or more tailored approach for affected funds, and if so, what should that be?
- Should we also require a seasoned fund filing a short-form registration statement on Form N-2 to tag information appearing in Exchange Act reports, such as those on Forms N-CSR, 10-Q, 10-K, or 8-K, if that information is required to be tagged in the fund’s prospectus? Why or why not?
- Is proposed General Instruction H.2 of Form N-2, in conjunction with rule 405 of Regulation S-T as we propose to amend it, sufficiently clear for registrants and other market participants to understand the proposed requirement to tag certain Form N-2 disclosure items in Inline XBRL format? Is this proposed requirement equally clear in its

requirements to tag initial registration statements, post-effective amendments, forms of prospectuses, and (for seasoned funds that file a short-form registration statement on Form N-2) certain information that appears in Exchange Act reports? If not, how could we make the requirements more clear?

- Would affected funds encounter any technical or other difficulties associated with the proposed requirement to tag certain information that appears in forms of prospectus or Exchange Act reports, and if so, how could we resolve such difficulties? For example, should we amend any of the Commission forms that affected funds use to file Exchange Act reports to facilitate the proposed tagging requirement? If so, how?

- As proposed, should affected funds be required to use Inline XBRL format to tag each of the following sections of the prospectus: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities? Should other or different information that affected funds disclose on Form N-2 be required to be tagged using Inline XBRL? For example, should we require tagging of information about asset coverage ratios?

- Should any category of affected fund (for example, affected funds that would not be eligible to file a short-form registration statement) be exempt from the proposed Inline XBRL requirements? If so, which ones, and why?

- To what extent do investors and other market participants find information that is available in a structured format useful for analytical purposes? Is information that is narrative, rather than numerical, useful as an analytical tool?

- Should the failure by an affected fund to submit a required Interactive Data File affect the registrant’s ability to file post-effective amendments to its registration statement, as is the case currently for mutual funds and ETFs? Why or why not? Should it similarly affect an affected fund’s ability to update its registration statement with information incorporated by reference from an Exchange Act report?

- We are proposing to require BDCs to submit the information from their financial statements using Inline XBRL format.<sup>194</sup> We also are proposing that all affected funds—BDCs and registered CEFs—tag certain prospectus disclosure items using Inline XBRL. Should we also require registered CEFs to submit

<sup>188</sup> See *infra* footnote 207 and accompanying text.

<sup>189</sup> See Inline XBRL Adopting Release, *supra* footnote 166.

<sup>190</sup> Proposed General Instruction H.2.a of Form N-2; cf. General Instruction C.3.(g)(i)(B) of Form N-1A.

In the corresponding instruction in Form N-1A, the timing of the submission of the Interactive Data File varies based on whether the fund is filing a registration statement or post-effective amendment pursuant to rule 485(a) under the Securities Act, or a post-effective amendment pursuant to rule 485(b) under the Act. If the fund is filing pursuant to rule 485(a), it must submit the Interactive Data File as an amendment to the registration statement to which it relates, on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective. See General Instruction C.3.(g)(i)(A) of Form N-1A. If the fund is filing pursuant to rule 485(b) (where the post-effective amendment may become effective immediately upon filing), the fund may submit the Interactive Data File either together with the post-effective amendment filing, or in the same manner as it would with a rule 485(a) filing. See General Instruction C.3.(g)(i)(B) of Form N-1A. Because rule 485 is not applicable to affected funds, and because practices may differ as to automatic effectiveness of affected funds’ registration statements and post-effective amendments, the proposed Form N-2 instruction (like General Instruction C.3.(g)(i)(B) of Form N-1A) permits an affected fund to submit an Interactive Data file either concurrently with the registration statement or post-effective amendment filing, or as a subsequent amendment that is filed on or before the date that the registration statement or post-effective amendment that contains the related information becomes effective.

<sup>191</sup> Proposed General Instruction H.2.b to Form N-2; cf. General Instruction C.3.(g)(ii) of Form N-1A.

<sup>192</sup> Proposed General Instruction H.2.c to Form N-2.

<sup>193</sup> See rule 201 of Regulation S-T (temporary hardship exemption) and rule 202 of Regulation S-T (continuing hardship exemption).

<sup>194</sup> See *supra* Part H.1.a.

the information from their financial statements to the Commission using Inline XBRL format? If so, should we require registered CEFs to tag all of this information, or just information that is not required by Forms N-PORT or N-CEN, such as certain information from a fund's Statement of Operations or Financial Highlights?<sup>195</sup>

#### d. Structured Data Format for Form 24F-2

Today, filings on Form 24F-2 are submitted via EDGAR in HTML or, less commonly, American Standard Code for Information Interchange ("ASCII") format.<sup>196</sup> Such submissions are human-readable but are not susceptible to automated validation or aggregation. We believe use of a structured data format would make it easier for issuers to accurately prepare and submit the information required by Form 24F-2 and would make the submitted information more useful to Commission staff. Automated validation processes could help issuers compute registration fees accurately before submitting the filing. A structured filing format could also facilitate pre-population of previously-filed information. Therefore, we propose to amend the EDGAR Filer Manual to require submission of filings on Form 24F-2 in a structured XML format.<sup>197</sup>

We request comment on our proposal to require filings on Form 24F-2 to be submitted in a structured XML format:

- Should we require, as proposed, that filings on Form 24F-2 be submitted in a structured format? Why or why not?

<sup>195</sup> A fund's Statement of Operations and Financial Highlights describes the amount and character of the income received (e.g., dividends, interest income, payment in kind ("PIK")), which helps investors understand whether a fund is likely to pay or cut a dividend, and the amount and character of the distributions paid (e.g., distributions from income, realized gains, return of capital), which helps investors understand whether they are receiving actual profits from the fund, or just receiving a portion of their original investment. Similarly, a registered CEF must identify affiliated investments and income from affiliates in its Schedule of Investments, Statement of Assets & Liabilities, and Statement of Operations. Investors that are focused on the potential conflicts of interest that are inherent in affiliated transactions may look more carefully at a fund that invests a significant amount in an affiliate that only pays PIK. This could suggest that the fund is investing in the entity because it is an affiliate, and not because it is a good investment.

<sup>196</sup> See General Instruction A.3 to Form 24F-2; rule 101(a)(1)(iv). We are also proposing to make a technical correction in Form 24F-2 to refer to the applicable paragraph of rule 101 of Regulation S-T. See proposed General Instruction A.3 to Form 24F-2 (correcting "rule 101(a)(1)(i)" to "rule 101(a)(1)(iv)").

<sup>197</sup> As discussed in detail above, we are also proposing to expand the group of issuers subject to filing on Form 24F-2 to include certain affected funds. See *supra* Part II.G.

Should the required format, as proposed, be XML? Why or why not? If another format would be more appropriate, which format and why?

- Should the requirement to submit filings on Form 24F-2 in a structured data format apply to certain 24F-2 filers and not to others? If so, which ones and why?
- Should the Commission make available a web-based fillable form for preparing submissions on Form 24F-2? Why or why not? Would such a tool be useful for filers? Would additional pre-filing validation processes designed to reduce fee computation errors be useful for filers?

#### 2. Periodic Reporting Requirements

We are also proposing new annual report requirements. We expect several of the reforms we are proposing in this release, such as those relating to automatically effective shelf registration, forward incorporation by reference, and final prospectus delivery, would elevate the importance of periodic reporting relative to prospectus disclosure for affected funds. A seasoned fund filing a short-form registration statement on Form N-2 would forward incorporate all periodic Exchange Act reports into its registration statement.<sup>198</sup> This could result in periodic reports becoming a more salient, convenient, and comprehensive source of updated information about a particular seasoned fund, relative to that fund's registration statement. These funds' annual reports may take on greater prominence, with investors looking to the annual reports for key information.<sup>199</sup> Registered CEFs' shareholder reports may also take on greater prominence for investors because, under the proposal, affected funds would not be required to deliver final prospectuses but would still be required to deliver shareholder reports at least semi-annually.<sup>200</sup>

Accordingly, we are proposing to require seasoned funds that register using the proposed short-form registration instruction to include key information in their annual reports regarding fees and expenses, premiums

<sup>198</sup> See proposed General Instruction F.3.b of Form N-2.

<sup>199</sup> In 2005, the Commission observed that recent enhancements to Exchange Act reporting enabled us to rely on those reports to a greater degree in adopting our rules to reform the securities offering process. Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726. As the Commission did then, we believe that enhanced periodic reporting is an important corollary to reform of the offering process under the Securities Act. See *id.*

<sup>200</sup> Compare proposed 17 CFR 230.172 with 17 CFR 270.30e-1; see also *supra* Part II.C.

and discounts, and outstanding senior securities that the funds currently disclose in their prospectuses.<sup>201</sup> Because the annual report will be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. We believe that investors should have no less current information than they do today about these items when the fund is offering its shares. Finally, we are proposing to require registered CEFs to provide management's discussion of fund performance (or "MDFP") in their annual reports to shareholders, BDCs to provide financial highlights in their registration statements and annual reports, and affected funds filing a short-form registration statement on Form N-2 to disclose material unresolved staff comments. These proposals are intended to modernize and harmonize our periodic report disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.<sup>202</sup>

#### a. Fee and Expense Table, Share Price Data, and Senior Securities Table

We are proposing to require funds filing a short-form registration statement on Form N-2 to include key information in their annual reports that they currently disclose in their prospectuses in light of the importance of this information and the increased prominence of shareholder reports under our proposal. Specifically, we propose that these funds include the following information in their annual reports:<sup>203</sup>

<sup>201</sup> In general, these proposed requirements are expressed as a cross-reference to the existing registration statement requirements in Form N-2. See proposed Instructions 4.h(1)–4.h(4) to Item 24 of Form N-2. We considered proposing that these requirements apply to both annual and semi-annual reports to shareholders in the case of registered CEFs. We determined to propose to require this disclosure only in annual reports (and not also semi-annual reports) because annual reports currently provide more comprehensive information than semi-annual reports, and we therefore believe annual reports' information would be better complemented by the proposed additional disclosures.

<sup>202</sup> See *infra* Parts II.H.1.a–II.H.2.d. We also propose to amend Form N-2 to clarify that certain of its requirements for annual reports also apply to BDCs. See proposed Instruction 10 to Item 24 of Form N-2.

<sup>203</sup> See proposed Instruction 4.h(2) to Item 24 of Form N-2 (fee and expense table); Proposed Instruction 4.h(3) to Item 24 of Form N-2 (share

• *Fee and Expense Table*: Form N-2 currently requires registrants to include information about the costs and expenses that the investor will bear directly or indirectly, using specified captions and a specified tabular format.<sup>204</sup> This table is designed to help investors understand the costs of investing in an affected fund and to compare those costs with the costs of other affected funds.<sup>205</sup> The Commission has previously noted the importance of costs to an investment decision and, in the case of registered open-end funds, has specified the location of the fee table to enhance the prominence of the cost information.<sup>206</sup>

• *Share Price Data*: Form N-2 currently requires registrants to include information about the share price of the registrant's stock as well as information about any premium or discount that the share price reflects, compared to the registrant's net asset value.<sup>207</sup> The presence of a premium or discount may bear on the likelihood, frequency, and size of distributions from the fund to its investors, which we believe may be of particular importance to many affected fund investors.

• *Senior Securities Table*: Form N-2 currently requires registrants to include information about each of its classes of senior securities, including bank loans.<sup>208</sup> As with a premium or discount, any outstanding senior securities may bear on the likelihood, frequency, and size of distributions from the fund to its investors.

We request comment on our proposal that these funds include this information in their annual reports:

- Should we require this information to appear in these affected funds' annual reports? Why or why not?
- Should we also require these affected funds to provide this

price data); Proposed Instruction 4.h(1) to Item 24 of Form N-2 (senior securities table).

<sup>204</sup> Item 3.1 of Form N-2.

<sup>205</sup> See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Release No. 28064 (Nov. 21, 2007) [72 FR 67790, 67794 (Nov. 30, 2007)].

<sup>206</sup> See *id.*; Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546, 4553 (Jan. 26, 2009)]; Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891, 26901 (June 11, 2018)] ("Investor Experience Request for Comment").

<sup>207</sup> Item 8.5 of Form N-2; see also proposed Instruction 4.h(3) to Item 24 of Form N-2 (share price data).

<sup>208</sup> Item 4.3 of Form N-2. This information must be audited. See Instruction 1 to Item 4.3 (applying Instruction 8 to Item 4.1 to Item 4.3); Instruction 8 to Item 4.1 (requiring the information to be audited).

information in their semi-annual and other periodic reports?

• Should the required information be the same as the information currently required in the registration statement? Should it be tailored to the annual report? If so, how and why? For example, should information on fees and expenses be backward-looking rather than forward-looking?

• We are proposing to require funds filing a short-form registration statement on Form N-2 to include the key information discussed above in their annual reports. Is the scope of affected funds we have proposed to be subject to this requirement appropriate? Should the scope be expanded or reduced? Why or why not? For example, should all affected funds be subject to the fee and expense information requirements, rather than only those that file a short-form registration on the form?

• Should we permit some or all of the required information to be provided on a fund's website in lieu of including it in the fund's annual report? Would a website disclosure requirement make more frequently and timely disclosure practicable? For example, should we permit a fund not to include the required premium and discount information in its annual report if it provides the information on its website on a daily basis? Would such information be more accessible to investors and other data users than information included in an annual report transmitted to shareholders, or less accessible?

#### b. Management's Discussion of Fund Performance

Currently, mutual funds and ETFs are required to include MDPF in their annual reports to shareholders.<sup>209</sup> That requirement was intended to address our concern that existing disclosure requirements did not provide investors with sufficient information to easily evaluate investment results achieved by mutual funds, or to relate those results to the mutual fund's investment objective.<sup>210</sup> MDPF disclosure aids investors in assessing a fund's performance over the prior year and complements other backward looking information required in the annual report, such as financial statements.<sup>211</sup>

<sup>209</sup> Item 27(b)(7) of Form N-1A. This requirement applies to registered open-end management investment companies other than money market funds.

<sup>210</sup> Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure, Investment Company Act Release No. 17294 (Jan. 8, 1990) [55 FR 1460, 1462 (Jan. 16, 1990)] ("MDPF Proposing Release").

<sup>211</sup> Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment

This required disclosure is grounded conceptually in the disclosure requirement for operating companies (as well as BDCs) to include a narrative discussion of the financial statements of the company—"management discussion and analysis" or "MD&A"—and to provide an opportunity to look at a company through the eyes of management.<sup>212</sup> MDPF requires, among other things, narrative disclosure about factors that materially affected the fund's performance during the most recently completed fiscal year, as well as the impact on a fund and its shareholders of policies and practices that funds may use to maintain a certain level of distributions.<sup>213</sup> This narrative disclosure requirement is formulated in an intentionally general way, reflecting our view that a flexible approach would elicit more meaningful disclosure tailored to each fund.<sup>214</sup>

Although the Commission has required mutual funds and ETFs to include MDPF disclosure and BDCs, like operating companies, to include MD&A disclosure for some time, Form N-2 does not currently include an MD&A or MDPF requirement for registered CEFs. We believe that investors in these funds—like investors in mutual funds, ETFs, BDCs, and operating companies—would benefit from annual report disclosure that aids them in assessing the fund's performance over the prior year and that complements other information in the report.<sup>215</sup> Moreover, we believe that

Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11243, 11254 (Mar. 9, 2004)] ("Quarterly Portfolio Disclosure Adopting Release"). When this disclosure requirement was first adopted, the information could be included in either the prospectus or the annual report, but in 2004 the Commission determined to require that it be included in the annual report to aid investors in assessing a fund's performance over the prior year and to complement other backward looking information required in the annual report, such as financial statements. *Id.*

<sup>212</sup> MDPF Proposing Release, *supra* footnote 210, at 1462 (explaining that the MD&A disclosure requirement includes a discussion of an operating company's liquidity, capital resources, results of operations, and other information necessary to an understanding of the company's financial condition, changes in financial condition, and results of operations; further explaining that it requires the management of an operating company to identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the company).

<sup>213</sup> *Id.* at 1461; Item 27(b)(7) of Form N-1A.

<sup>214</sup> MDPF Proposing Release, *supra* footnote 210, at 1462. The narrative discussion must relate back, in part, specifically to the fund's investment strategies and the techniques used by the fund's investment adviser. See Item 27(b)(7)(i).

<sup>215</sup> See Quarterly Portfolio Disclosure Adopting Release, *supra* footnote 211, at 11254; Comment Letter of Investment Company Institute (Oct. 24,

MDFP disclosure requirements are more appropriately tailored to the financial reporting of registered investment companies than MD&A requirements. Therefore, we propose to amend Form N-2 to extend the MDFP disclosure requirements to all registered CEFs. Specifically, we propose to require, similar to Form N-1A, that registered CEFs:

- Discuss the factors that materially affected their performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the fund;<sup>216</sup>
- Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed ten fiscal years of the fund and a table of the fund's total returns for the 1-, 5-, and 10-year periods as of the last day of the fund's most recent fiscal year;<sup>217</sup> and
- Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the fund's investment strategies and per share net asset value during the last fiscal year, as well as the extent to which the registrant's distribution policy resulted in distributions of capital.<sup>218</sup>

We request comment on the proposed requirement for registered CEFs to include a discussion of fund performance in their annual reports:

- Should we require MDFP information to appear in a registered CEF's annual report? Why or why not? If so, should we further tailor the current MDFP requirements applicable to mutual funds and ETFs for registered

CEFs, beyond ways in which the proposal is already tailored for registered CEFs?

- Instead of requiring MDFP information for registered CEFs, should we require such funds to disclose MD&A information like BDCs and operating companies? If so, should an MD&A requirement be tailored for registered CEFs? If so, how and why? Should the disclosure requirement vary between funds that are internally managed and those that are externally managed? For example, would an MD&A requirement be more appropriate for internally managed funds and an MDFP requirement be more appropriate for externally managed funds? Why or why not?

• Alternatively, should we bring over any of the MD&A requirements into the proposed MDFP requirement for registered CEFs, in order to further the disclosure goals of MDFP? Would it be appropriate to require or permit forward-looking disclosure, as is included in MD&A disclosure (and if so, are there any related additional rules or rule amendments we should adopt to facilitate this disclosure)? For example, many investors invest in registered CEFs based on an expectation of receiving shareholder distributions. In addition to the proposed requirement that registered CEFs include in MDFP a discussion of distributions to shareholders during the last fiscal year, would investors benefit from a forward-looking discussion of anticipated distributions? If we were to require certain MD&A requirements for registered CEFs, should these requirements apply only to a certain subset of registered CEFs, for example, those that most closely resemble BDCs in terms of investment strategy? If so, what changes to the proposed MDFP disclosure requirements should we make to achieve this result? As another alternative, should we require registered CEFs to provide either MD&A or MDFP disclosure, based on their view of the presentation that would be most informative to investors?

- Are there other ways in which we should modify the proposed MDFP disclosure requirement for registered CEFs to better elicit meaningful disclosure that would further the goals that the Commission discussed when it originally adopted the MDFP requirement for open-end funds?<sup>219</sup> For example, in reviewing MDFP disclosure provided by mutual funds and ETFs, our staff has observed instances in which funds' MDFP disclosure was not

well tailored to the relevant fund and generally discussed economic trends without a meaningful discussion of how those trends (or other factors) materially affected the fund's performance during the period. Are there changes we can make to the proposed MDFP disclosure requirements for registered CEFs to make more clear that MDFP disclosure should discuss the factors that materially affected the fund's performance during the period as opposed to more general discussions of economic trends and fund performance? For example, should we incorporate requirements to: (1) Disclose the impact of particular investments (including large positions and/or significant investments) or investment types that contributed to or detracted from performance; (2) explain a fund's performance in relation to its index; (3) explain how the use of leverage affected fund performance; (4) explain the reason for and effect of any large cash or temporary defensive positions on fund performance; (5) explain the effect of any tax strategies, or the effects of taxes, on fund performance; (6) explain the effect of non-recurring or non-cash income on fund performance; (7) include general discussion of purchases and sales of fund shares and the effects of any share repurchases or tender offers on fund performance; and/or (8) disclose whether the fund engages in high portfolio turnover and the effect of portfolio turnover on fund performance? Are there changes we should make to the proposed average annual total return table to provide additional or more useful information to investors, for example, to require total return based on per-share net asset value, in addition to (as is proposed) total return based on current market price?

- As another alternative, should any of the proposed MDFP requirements for registered CEFs also be required for BDCs to include in their MD&A? For example, should we include the line graph currently required in MDFP in the MD&A requirements applicable to BDCs?

• Should registered CEFs be required to include the line graph that mutual funds and ETFs are required to include in their MDFP disclosure, as we have proposed? If so, should that requirement be differently or further tailored for registered CEFs in any way? If so, how and why?

- The line graph that mutual funds and ETFs are required to include in their MDFP disclosure, and which we would propose to require of registered CEFs, compares the fund's performance to an "appropriate broad-based

2018) on File No. S7-12-18 (recommending that the Commission consider requiring registered CEFs to provide an MDFP in shareholder reports); Comment Letter of A. Wellington (Sept. 3, 2018) on File No. S7-12-18 (noting that registered CEF shareholder reports do not include MDFP and expressing concerns about registered CEF disclosures).

<sup>216</sup> Proposed Instruction 4.g(1) to Item 24 of Form N-2. As proposed, we would expressly permit the information presented to include tables, charts, and other graphical depictions. *Id.* We encourage such depictions to the extent they may be illuminating.

<sup>217</sup> Proposed Instruction 4.g(2) to Item 24 of Form N-2. The proposed requirement for Form N-2 differs from the requirement in Form N-1A in that open-end fund values must be computed on the basis of the fund's net asset value per share, while registered CEF values would be required to be computed on the basis of market price per share or on the basis of net asset value if their shares are not listed. Compare Instruction 1(b) to Item 27(b)(7)(iv) of Form N-1A with proposed Instruction 4.g(2)(A)1 to Item 24 of Form N-2. Because certain registered CEFs have received exemptive relief to offer more than one share class, we are including an instruction regarding class selection for purposes of the line graph computation. See proposed Instruction 4.g(2)(A)2 to Item 24 of Form N-2.

<sup>218</sup> Proposed Instruction 4.g(3) to Item 24 of Form N-2.

<sup>219</sup> See *supra* footnote 210 and accompanying text.

securities market index.”<sup>220</sup> In adopting this requirement, the Commission described such an index as “one that provides investors with a performance indicator of the overall applicable stock or bond markets, as applicable,” while also stating that a fund would have “considerable flexibility in selecting a broad-based index that it believes best reflects the market(s) in which it invests.”<sup>221</sup> Our staff has observed varying practices with respect to the benchmarks funds use. Some funds, for example, disclose their performance against a benchmark index that may not provide a performance indicator of “the overall applicable stock or bond markets,” and in some cases, is not a “securities market index.”<sup>222</sup> Others disclose as their benchmark index a combination of two or more broad-based securities market indexes.<sup>223</sup> We recently requested comment on benchmark indexes in our Investor Experience Request for Comment, with some investors expressing concerns about the effectiveness of the benchmarks certain funds use in presenting their performance.<sup>224</sup> As we continue to consider improvements to the investor experience with fund disclosure,<sup>225</sup> we seek further comment

on how benchmark indexes are used in connection with performance presentations. If an index does not reflect the performance of the overall applicable stock or bond markets, does it provide an effective comparison for investors to understand the performance of their fund relative to the market? If not, should we provide additional limitations on an appropriate benchmark to facilitate a more effective comparison? If so, what kinds of limitations and why?

#### c. Financial Highlights

Currently, registered CEFs are required to include financial highlights in their registration statement,<sup>226</sup> as well as in each annual report to shareholders.<sup>227</sup> This information is arranged to allow investors to trace the operating performance of a fund on a per share basis from the fund’s beginning net asset value to its ending net asset value so that investors may understand the sources of changes.<sup>228</sup> It summarizes the financial statements.<sup>229</sup> BDCs include their full financial statements in their prospectus, and we currently permit BDCs to omit financial highlights disclosure summarizing these financial statements.<sup>230</sup> We understand, however, that it is generally market practice for BDCs to include financial highlights, and we believe that investors would benefit from disclosure summarizing a BDC’s financial statements. In light of the importance of financial highlights information and to provide consistent requirements for all affected funds, we are proposing to require that BDCs, like other affected funds, disclose this information in their registration statements and annual reports.<sup>231</sup>

the current disclosure framework of funds under the Investment Company Act to improve the investor experience. The Commission’s Fall 2018 Regulatory Flexibility Act agenda is available at [www.reginfo.gov](http://www.reginfo.gov).

<sup>226</sup> Item 4.1 of Form N-2; *but see* General Instruction 1 to Item 4.1 of Form N-2 (limiting the applicability of Item 4.1 in the case of BDCs).

<sup>227</sup> Instruction 4.b to Item 24 of Form N-2.

<sup>228</sup> Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 19115 (Nov. 20, 1992) [57 FR 56826, 56829 (Dec. 1, 1992)].

<sup>229</sup> Registration Form for Closed-End Management Investment Companies, Investment Company Act Release No. 17091 (July 28, 1989) [54 FR 32993, 32997 (Aug. 11, 1989)].

<sup>230</sup> General Instruction 1 to Item 4.

<sup>231</sup> Proposed Deletion of Instruction 1 to Item 4 of Form N-2.

In addition, we propose to make one conforming change to the financial highlights requirements in Form N-2 to eliminate the requirement that registered CEFs specify the average commission rate paid.<sup>232</sup> Although this information is currently required for registered CEFs,<sup>233</sup> the Commission previously eliminated a similar requirement for open-end funds registered on Form N-1A.<sup>234</sup> The Commission reached this determination after receiving and considering public comment arguing that these rates are technical information that typical investors are unable to understand.<sup>235</sup> We believe that the same considerations meriting elimination of this information from Form N-1A also apply to registered CEFs.

We request comment on the proposed requirement for BDCs to disclose financial highlights and the elimination of the requirement that registered CEFs specify the average commission rate paid:

- Should we require BDCs to disclose financial highlight information? Why or why not?
- BDCs currently disclose information under Item 301 of Regulation S-K that has some similarities to the financial highlights requirement. Would requiring disclosure of both sets of information result in duplicative disclosure obligations? Why or why not? Should we permit the Item 301 information and the financial highlights information to be presented in a combined manner, or should we require each set of information to be disclosed separately? Why?
- Should the required financial highlight information be tailored for BDCs in any way? If so, how and why?
- Should we eliminate the average commission rate paid requirement from Form N-2? Why or why not? Should registered CEFs be distinguished from open-end funds in this respect?

<sup>232</sup> See proposed Item 4.1 of Form N-2.

<sup>233</sup> Item 4.1.1 of Form N-2; Instructions 18–19 to Item 4.1 of Form N-2.

<sup>234</sup> Item 13(a) of Form N-1A; Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13936 (Mar. 23, 1998)].

<sup>235</sup> *Id.*

<sup>220</sup> Proposed Instruction 4(g)(2)(F) of Form N-2; *cf.* Instruction 5 of Item 27(b)(7) of Form N-1A.

<sup>221</sup> Disclosures of Mutual Fund Performance and Managers, Investment Company Act Release No. 19832 (Apr. 6, 1993) [58 FR 19050, 19053 (Apr. 12, 1993)].

<sup>222</sup> Our staff has observed that some funds, particularly those that invest in several different asset classes, may select an interest-rate index (*e.g.*, LIBOR), not a securities market index, against which to compare their performance.

<sup>223</sup> Other funds disclose a “blended index” that combines the components of two or more broad-based securities market indices (*e.g.*, 50% S&P 500, 50% Barclays US Aggregate Bond Index). Funds with niche or highly-customized investment strategies may disclose a customized or bespoke index that is used only by the fund in question (or perhaps a small number of funds).

<sup>224</sup> See Investor Experience Request for Comment, *infra* footnote 206 (comments available at <https://www.sec.gov/comments/s7-12-18/s71218.htm>); Comment of Logan Fowler (Aug. 13, 2018) (“Compare to a market measure I understand, and the asset class the fund holds.”); Comment of Hector Ewing (Aug. 30, 2018) (“Compare against a market measure I know, like the S&P 500, not some obscure thing I never heard of.”); and Comment of Frank W. (“Compare all equity funds to S&P 500 or compare all bond funds to Total Bond Index. Compare funds to similar funds (in same category).”).

<sup>225</sup> As described in the Commission’s Fall 2018 Regulatory Flexibility Act agenda, the Division of Investment Management is considering recommending that the Commission propose rule and form amendments to improve and modernize

#### d. Unresolved Staff Comments

As part of the Commission's 2005 securities offering reforms for operating companies, the Commission required certain issuers affected by that rulemaking to disclose outstanding staff comments that remain unresolved for a substantial period of time and that the issuer believes are material.<sup>236</sup> The Commission stated at the time that enhanced Exchange Act reporting provided a principal basis for those rules. Specifically, the Commission emphasized that it is important for issuers to timely resolve any staff comments on their Exchange Act reports, but recognized that the new rules could eliminate some incentives issuers may have to do so.<sup>237</sup> Specifically, the Commission required operating companies that are accelerated filers or WKSIs to disclose, in their annual reports on Form 10-K or Form 20-F, written comments staff made in connection with a review of Exchange Act reports that the issuer believes are material, that were issued more than 180 days before the end of the fiscal year covered by the annual report, and that remain unresolved as of the date of the filing of the Form 10-K or Form 20-F report.<sup>238</sup> This rulemaking, like the 2005 securities offering reforms, may eliminate some incentives for certain affected funds to timely resolve staff comments. Currently, for staff to declare any annual update to the fund's registration statement effective, affected funds generally must resolve all staff comments.<sup>239</sup> Under the proposed amendments, in contrast, affected funds filing a short-form registration statement on Form N-2 would generally no longer need to file annual post-effective amendments subject to staff review.<sup>240</sup> We therefore propose to amend the annual report requirement in Form N-2 to apply a similar requirement to affected funds filing a short-form registration on the form.<sup>241</sup> In addition to written comments on current and periodic reports, we also propose to require these funds to disclose unresolved written comments on their registration statement that they believe are material.<sup>242</sup> Affected funds filing a short-form registration statement on

Form N-2 will have flexibility in providing required prospectus disclosure directly in the prospectus or in Exchange Act reports incorporated by reference. Our proposal would therefore require these funds to disclose material unresolved staff comments on key required disclosures regardless of whether a fund includes them in a shareholder report or directly in the fund's registration statement. These disclosure requirements would provide an incentive for affected funds to timely resolve staff comments, and investors may value information about areas of disagreement that the issuer believes are material.

We request comment on the proposed requirement to disclose unresolved staff comments:

- Should we require disclosure of unresolved staff comments? Why or why not? Are there more appropriate means to provide incentives to timely resolve staff comments? Should we require disclosure of unresolved staff comments in semi-annual reports as well?
- Is the scope of registrants subject to the unresolved staff comments disclosure requirement appropriate? Should the requirement apply to additional registrants? If so, which ones, and why? For example, should the requirement apply to all affected funds, or a different subset of affected funds than proposed? Should the requirement apply, for example, to registered CEFs that file post-effective amendments to registration statements under paragraph (b) of Securities Act rule 486? Similarly, should the requirement apply to mutual funds and ETFs that file post-effective amendments under paragraph (b) of Securities Act rule 485? Alternatively, should the requirement apply to fewer affected funds? If so, which ones, and why?
- Should the staff have a role in determining which unresolved comments should be disclosed? Should we require disclosure of all unresolved comments without regard to a materiality assessment by the issuer?
- Should we specifically require issuers to list each outstanding comment in its disclosure by repeating the comment verbatim as issued by the staff instead of, as proposed, requiring issuers to disclose the substance of any unresolved comment? Should we permit issuers to paraphrase or summarize the outstanding staff comments?
- Is 180 days the right timeframe to resolve outstanding staff comments? Is it too long or too short? Should the 180 days be calculated from the date of the initial written comment letter from the staff, regardless of comments received

after that date that relate to or arise from the original comments or issuer responses to the original comments?

#### 3. New Current Reporting Requirements for Affected Funds

Form 8-K under the Exchange Act generally requires reporting companies subject to the periodic reporting requirements of the Exchange Act, including BDCs, to publicly disclose certain specified events and information on a current basis to provide investors and the market with timely information about these events. In order to improve information for investors and to provide parity among registered CEFs, BDCs, and operating companies, we are proposing to require registered CEFs to report information on Form 8-K.<sup>243</sup> We also propose to amend Form 8-K to: (1) Add two new reporting items for affected funds on material changes to investment objectives or policies and material write-downs of significant investments, and (2) tailor the existing reporting requirements and instructions to affected funds.<sup>244</sup>

##### a. Proposal To Require Form 8-K Reporting by Registered CEFs

Form 8-K identifies certain events that are of such importance to investors that prompt disclosure is necessary. Companies may also use Form 8-K to voluntarily disclose any other information that they determine may be material or otherwise important to investors.<sup>245</sup> Under the current regulatory framework, BDCs are required to furnish or file reports on Form 8-K to provide current information about important events. These events include, among others, new material definitive agreements, quarterly earnings announcements and releases, new direct financial obligations, changes in directors, sales of unregistered equity securities, and submissions of matters to a vote of security holders.<sup>246</sup> Registered CEFs

<sup>243</sup> Consistent with the scope of operating companies that currently are required to file reports on Form 8-K, only registered CEFs that are Exchange Act reporting companies under section 13(a) or section 15(d) of the Exchange Act would be subject to Form 8-K requirements under our proposal. See 17 CFR 240.13a-1; 17 CFR 240.13a-11; 17 CFR 240.15d-1; 17 CFR 240.15d-11.

<sup>244</sup> In connection with this proposal, we are proposing to amend Form 8-K as well as rule 13a-11 and rule 15d-11 under the Exchange Act.

<sup>245</sup> See, e.g., Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Securities Act Release No. 8106 (June 17, 2002) [67 FR 42914, 42915 (June 25, 2002)]; Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Securities Act Release No. 8400 (Mar. 16, 2004) [69 FR 15594, 15595 (Mar. 25, 2004)] ("2004 8-K Adopting Release").

<sup>246</sup> See Items 1.01 (Entry into a Material Definitive Agreement), 2.02 (Results of Operations and

<sup>236</sup> Securities Offering Reform Adopting Release, *supra* footnote 5, at 44787.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> See *supra* footnote 25 and accompanying text.

<sup>240</sup> These funds would, however, generally be required to file a new registration statement every three years. See *supra* footnote 19.

<sup>241</sup> Proposed Instruction 4.h(4) to Item 24 of Form N-2.

<sup>242</sup> *Id.*



generally are not required by our rules to report information on Form 8-K,<sup>247</sup> although some do so voluntarily or under exchange rules.<sup>248</sup> Exchange rules generally require certain disclosure to be made on Form 8-K or through another Regulation FD compliant method that is reasonably designed to provide broad non-exclusionary distribution of the information to the public.<sup>249</sup> Approximately 73% of registered CEFs are listed on an exchange and already subject to exchange rules requiring prompt public disclosure of certain information.<sup>250</sup> Registered CEFs may also furnish information on Form 8-K to satisfy public disclosure requirements under Regulation FD.<sup>251</sup>

Financial Condition), 2.03 (Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant), 3.02 (Unregistered Sales of Equity Securities), 5.02 (Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers), and 5.07 (Submission of Matters to a Vote of Security Holders). Based on a review by the staff, BDCs file or furnish reports under these items of Form 8-K more frequently than other mandatory reporting items in the Form. BDCs also made many reports under Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events).

<sup>247</sup> See rules 13a-11(b) and 15d-11(b) under the Exchange Act [17 CFR 240.13a-11(b) and 17 CFR 240.15d-11(b)]. While registered CEFs are required to use Form 8-K to file notice of a blackout period under 17 CFR 245.104 (rule 104 of Regulation BTR), we have recognized that this requirement would only apply to investment companies in rare instances. See rules 13a-11(b)(1) and 15d-11(b)(1) under the Exchange Act; Insider Trades During Pension Fund Blackout Periods, Exchange Act Release No. 47225 (Jan. 22, 2003) [68 FR 4338, 4339 (Jan. 28, 2003)]; Insider Trades During Pension Fund Blackout Periods, Exchange Act Release No. 46778 (Nov. 6, 2002) [67 FR 69430, 69432 (Nov. 15, 2002)] (explaining that because investment companies typically do not have employees, they typically do not maintain employee pension plans and, as a practical matter, there generally would be no blackout periods that would trigger a Form 8-K reporting requirement).

<sup>248</sup> See, e.g., NYSE Listed Company Manual Sections 202.05 and 202.06 (providing the following examples of the types of information that may need to be promptly disclosed to the public: annual and quarterly earnings, dividend announcements, mergers, acquisitions, tender offers, stock splits, major management changes, and any substantive items of unusual or non-recurrent nature); Nasdaq Rule 5250(b)(1).

<sup>249</sup> See, e.g., NYSE Listed Company Manual Section 202.06(A); Nasdaq rule 5250(b)(1); rule 101(e) of Regulation FD [17 CFR 243.101(e)].

<sup>250</sup> As of September 30, 2018, there were 516 listed registered CEFs and 188 unlisted registered CEFs. See *infra* Part IV.A.1.

<sup>251</sup> See rule 101(e) of Regulation FD [17 CFR 243.101(e)]; Item 7.01 of Form 8-K. Affected funds are generally subject to Regulation FD. See rule 101(b) of Regulation FD [17 CFR 243.101(b)] (providing that an issuer subject to Regulation FD is one that has a class of securities registered under section 12 of the Exchange Act [15 U.S.C. 78f] or that is required to file reports under section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], including any closed-end investment company, as defined in section 5(a)(2) of the Investment Company Act [15 U.S.C. 80a-5(a)(2)]).

In adopting the 2005 securities offering reforms, the Commission stated that reforming the securities offering process was possible due, in part, to the fact that operating companies disseminated information to the market on an ongoing basis through Exchange Act reports, including current reporting on Form 8-K.<sup>252</sup> In addition, operating companies must provide current information on Form 8-K to qualify as WKSIs or seasoned issuers and gain the associated benefits (e.g., automatic shelf registration statements, forward incorporation by reference).<sup>253</sup> We are proposing to require registered CEFs to report current information on Form 8-K to improve current information available to registered CEF investors and in recognition of the role of current reporting in the 2005 securities offering reforms that we are proposing to extend to registered CEFs. We also believe that requiring this reporting would address the current lack of parity between registered CEFs and BDCs in terms of current reporting to investors and the market.

While we understand that registered CEFs presently may provide some current disclosure through press releases, voluntary Form 8-K filings, prospectus supplements, or post-effective amendments, we believe it would be beneficial to standardize the current information that all affected funds must disclose and to make this information accessible in a central location on EDGAR.<sup>254</sup> This approach would provide all investors in affected funds with uniform information and

<sup>252</sup> See 2005 Securities Offering Reform Adopting Release, *supra* footnote 5, at 44726. See also *id.* at 44730 (declining to make the benefits of being a reporting issuer, seasoned issuer, or well-known seasoned issuer available to voluntary filers and stating that “such issuers should be required to register under the Exchange Act, and thus become subject to all of the results of registration for all purposes, if they wish to avail themselves of” these benefits).

<sup>253</sup> See General Instruction I.A.3 of Form S-3 (requiring, in relevant part, that an operating company has filed all the material required to be filed pursuant to section 13 or 15(d) of the Exchange Act—which would include Form 8-K—for a period of time, and has filed all such required reports in a timely manner for that period, with the exception of specified Form 8-K items); rule 405 under the Securities Act (requiring an issuer to meet these Form S-3 requirements to qualify as a WKSI).

<sup>254</sup> Notably, registered CEFs would still be permitted to publish current information in press releases or other published documents or statements (“press releases”). If a press release contains information that would meet some or all requirements of Form 8-K and is published before a registered CEF would be required to file a Form 8-K report under any relevant items, the registered CEF could incorporate by reference information from the press release into its Form 8-K report, provided the press release is filed as an exhibit to the report. See General Instruction F of Form 8-K.

reduce potential informational disparities.

We recognize that certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, although the existing requirements provide less timely disclosure. For example, registered CEFs are generally required to provide the information required under Item 4.01 (Changes in Registrant’s Certifying Accountant) of Form 8-K in their semi-annual or annual shareholder reports.<sup>255</sup> Further, registered CEFs are required to provide in their semi-annual or annual shareholder reports certain information found in Item 5.07 of Form 8-K about matters submitted to a vote of shareholders.<sup>256</sup> Notably, Form 8-K would require disclosure within 4 business days of the relevant event, while the existing regime calls for disclosure on an annual or semi-annual basis. We believe it would be appropriate to require registered CEFs to provide more timely and current disclosure on these matters on Form 8-K. We are not proposing to remove or otherwise modify current disclosure requirements for registered CEFs that are similar to reportable events under Form 8-K. We believe this approach should not significantly burden registered CEFs since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in their shareholder reports.<sup>257</sup> Moreover, we believe that continuing to require the relevant disclosure in shareholder reports may reduce potential disruptions to shareholders who are accustomed to finding certain information in these reports, and who may not regularly monitor for reports on Form 8-K, and should limit discrepancies between different types of funds’ shareholder reports.

<sup>255</sup> See Instructions 4.d and 5.d of Item 24 of Form N-2. Operating companies are similarly required to provide this information in their annual reports to security holders. See 17 CFR 240.14a-3(b)(4); 17 CFR 240.14c-3(a)(1).

<sup>256</sup> See rule 30e-1(b) under the Investment Company Act [17 CFR 270.30e-1(b)]. We recognize that operating companies and BDCs are not required to provide information about shareholder voting results on Form 10-Q or Form 10-K. See Proxy Disclosure Enhancements, Exchange Act Release No. 61175 (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)].

<sup>257</sup> As discussed below, a registered CEF would not be required to furnish or file a report on Form 8-K if relevant disclosure was already provided in a shareholder report. See proposed amendments to General Instruction B.3 of Form 8-K, discussed *infra* at footnotes 295–296 and accompanying text.



We request comment on our proposal to apply Form 8-K reporting requirements to registered CEFs:<sup>258</sup>

- Should all registered CEFs be required to disclose current information on Form 8-K? If not, why should certain or all registered CEFs be permitted to make use of the registration, communications, and offering amendments discussed in this proposal without providing current information to the market, unlike operating companies and BDCs? Should we require Form 8-K reporting only by listed registered CEFs or by registered CEFs that qualify as WKSIs or that are eligible to file a short-form registration statement? If so, why should certain types of registered CEFs (e.g., unlisted registered CEFs) be treated differently than similarly-situated BDCs or operating companies (e.g., unlisted BDCs)? What would be the potential impacts on investors and the market if we required different levels of information from different categories of registered CEFs? If we do not require certain types of registered CEFs to report on Form 8-K, should we also consider this approach for the same category of BDCs? What would be the potential impact on investors and the market of removing Form 8-K information for the relevant BDCs?

- Do investors and the market have a need for more current disclosure about important events impacting registered CEFs? Why or why not? Do informational needs vary between listed registered CEFs and unlisted registered CEFs? For example, do investors and the market need more current information about listed registered CEFs for purposes of pricing shares? Are investors and the market less likely to need current disclosure from registered CEFs that are engaged in a continuous offering and provide investors and the market information about important changes to their disclosure through prospectus supplements or post-effective amendments?

- Are there existing mechanisms that registered CEFs use to disclose current information about important events to investors, other than disclosures required by exchange rules as discussed above? For example, to what extent do registered CEFs provide current information about the types of important events covered by Form 8-K and our proposed amendments through filings under rule 497, in press releases, or on their websites? How timely and accessible are registered CEFs'

disclosures about important events under the current framework? How does this framework impact the potential costs and benefits of requiring registered CEFs to report information on Form 8-K?

- Should we address potentially duplicative disclosure requirements for registered CEFs under Form 8-K and existing rule and form requirements? If so, how? For example, should we amend rule 30e-1(b) under the Investment Company Act to exclude registered CEFs that file information under Item 5.07 of Form 8-K (Submission of Matters to a Vote of Security Holders) from the requirement to furnish information about matters submitted to a shareholder vote in the fund's annual or semi-annual shareholder report? Would investors be more likely to miss information disclosed only on Form 8-K, and not also included in an annual or semi-annual report to shareholders, because some investors may be more likely to read a shareholder report rather than monitor for 8-K filings during the year?

- Does a listed registered CEF's compliance with exchange disclosure rules impact the potential costs and benefits of requiring listed registered CEFs to report information on Form 8-K? If so, how?

- What are the impacts, if any, of requiring registered CEFs to make reports on Form 8-K but not subjecting other registered investment companies to this requirement?<sup>259</sup> Should we require that other registered investment companies provide current disclosure on Form 8-K or otherwise? Why or why not?

- In addition to the requests for comment above, we request general comment on feasible alternatives to our proposal to require registered CEFs to report on Form 8-K that would minimize the reporting burdens on funds while maintaining the anticipated benefits of the reporting and disclosure. We also request comment on the utility of the information proposed to be

<sup>259</sup> We have not proposed requiring registered investment companies that are not affected funds, such as registered open-end funds, to report information on Form 8-K because these funds are not eligible to take advantage of the other amendments to the registration, communications, and offering rules we are proposing. Further, the new Form 8-K items we are proposing are tailored to affected funds and may not provide useful information for other types of funds. For example, as described below, registered open-end funds typically invest in more liquid investments for which there is publicly-available information surrounding events that may impact valuations, which makes Form 8-K disclosure about these funds' material write-downs less important to investors. See *infra* Part II.H.3.b.ii (discussing proposed Item 10.02 of Form 8-K).

included in reports to the Commission, investors, and the public in relation to the costs to funds of providing the reports.

#### b. Proposed Form 8-K Reporting Items for Affected Funds

We are proposing amendments to Form 8-K as it relates to affected funds to improve current reporting of important information by affected funds to investors and the market. We believe it is appropriate to propose certain new reporting items that would apply to all affected funds to better tailor Form 8-K disclosure to these types of investment companies. We believe these amendments enhance parity between affected funds and operating companies that are able to take advantage of the registration, communications, and offering rules in the 2005 securities offering reforms with respect to the amount of current information available to investors, consistent with the overall intent of the Registered CEF and BDC Acts.

We believe many current reporting items are relevant to affected funds and provide information that is important to investors and the market. However, based on an analysis of BDC reporting on Form 8-K, BDCs did not file any reports under 7 of the 23 mandatory reporting items reflected in Item 1.01 through Item 5.08 over a 3-year review period, and there was a relatively low volume of reporting on several other items.<sup>260</sup> While we recognize that Form 8-K is meant to capture important events, many of which may occur at a low frequency, we believe it would be beneficial to investors and the market to make certain targeted amendments to Form 8-K as it applies to affected funds to ensure that investors and the markets receive important current information from affected funds. The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies. We believe these additions should promote parity between affected funds and operating companies with respect to the market benefits of current disclosure about relevant important events. This approach is similar to our approach to applying tailored Form 8-K reporting requirements to asset-backed issuers.<sup>261</sup>

<sup>260</sup> See also *infra* footnotes 415–416 and accompanying text.

<sup>261</sup> See section 6 of Form 8-K (identifying six discrete reportable events that apply only to asset-backed securities); Asset-Backed Securities, Exchange Act Release No. 50905 (Dec. 22, 2004) [70 FR 1506, 1508, 1577–80 (Jan. 7, 2005)] (establishing separate Form 8-K reportable events for asset-

<sup>258</sup> We also request comment on the proposed compliance date for the proposed amendments to Form 8-K in Part II.K *infra*.

Specifically, we are proposing to add new Section 10 to Form 8-K to list two additional reportable events for affected funds. Under new Section 10, an affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment. The first item represents an event that does not occur in operating companies and, thus, it has not previously been considered for purposes of current reporting requirements on Form 8-K. The second item is similar to the Form 8-K requirement that operating companies report material impairments, but with necessary modifications to tailor the disclosure requirements to affected funds and their use of fair value accounting under generally accepted accounting principles (“GAAP”). We believe these two events are important to investors and that affected funds should be required to provide timely disclosure when they occur. We believe that the proposed reportable events occur infrequently and should not result in numerous, persistent reports on Form 8-K by affected funds.

We request comment immediately below on this general approach and, separately, discuss each new proposed Form 8-K item.

- Should we add new reporting items to Form 8-K for affected funds? Why or why not? Should reportable items be the same or different for registered CEFs and BDCs?

- Should we expressly exclude affected funds from being required to report certain events covered by existing Form 8-K items, similar to the approach we took for asset-backed issuers? Which items should be covered by such an exclusion, and why? What are the potential benefits and costs of this approach?

- Beyond the proposed additional reporting items for affected funds, are there other events that are of such

backed securities in recognition that many of the Commission’s then-existing disclosure and reporting requirements did not elicit relevant information for most asset-backed securities transactions). Similar to asset-backed issuers, affected funds differ from corporate issuers because, for example, they typically do not have employees and they are generally formed to provide investors with exposure to a pool of assets. Unlike our approach to asset-backed issuers, we are not proposing a General Instruction to Form 8-K to exclude affected funds from certain reporting requirements. While we believe that certain items will never or very rarely create reporting obligations for affected funds, excluding affected funds from certain reporting requirements may unduly complicate Form 8-K and may not provide tangible benefits since affected funds are unlikely to be subject to such reporting requirements regardless of whether we provide specific exclusions.

importance to investors that we should require affected funds to report these events on Form 8-K? What are these events, and why are they important to investors? What are the potential benefits and costs of requiring an affected fund to furnish or file a report on Form 8-K for such events? For example, are there events covered by rule 8b-16(b) under the Investment Company Act, other than material changes to a fund’s investment objectives or policies, that an affected fund should be required to report on Form 8-K?<sup>262</sup> Are there other ways we should modify Form 8-K to recognize differences between affected funds and operating companies?

- An affected fund would be required to file a Form 8-K for both proposed reporting items in Section 10. Should we instead permit an affected fund to furnish rather than file a Form 8-K report for any of the proposed new reporting items? If so, which item, and why?<sup>263</sup> Should affected funds be permitted to furnish reports under certain items of Form 8-K that other issuers are required to file? Alternatively, should affected funds be required to file information that other issuers may furnish? Please explain any basis for treating affected funds differently.

#### i. Material Change to Investment Objectives or Policies

Information about an affected fund’s investment objectives or policies, such as the types of instruments and investment practices it uses, is important to prospective investors and current shareholders to help inform their investment decisions. Currently, affected funds disclose information about a material change in their investment objectives or policies through a post-effective amendment to a registration statement (in the case of a fund that is selling its securities in a delayed or continuous offering) or a periodic report. For example, certain registered CEFs are not required to amend their registration statements on an annual basis as long as their annual reports to shareholders disclose, among other things, any material changes to the fund’s investment objectives or policies

<sup>262</sup> See 17 CFR 270.8b-16(b).

<sup>263</sup> A Form 8-K report that is “furnished” rather than “filed” is not subject to section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered “filed” under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. See General Instruction B.2 of Form 8-K.

that have not been approved by shareholders.<sup>264</sup>

Given the importance of this information to investors, we are proposing to require current disclosure about a material change in an affected fund’s investment objectives or policies.<sup>265</sup> Under proposed Item 10.01 of Form 8-K, an affected fund would be required to file a Form 8-K report if the fund’s investment adviser, including any sub-adviser, has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval.<sup>266</sup> A reporting obligation would be triggered under this item once an affected fund’s adviser determines to implement a material change that represents a new or different principal portfolio emphasis—including the types of securities in which the fund invests or will invest, or the significant investment practices or techniques that the fund employs or intends to employ—from the fund’s most recent disclosure of its principal objectives or strategies.<sup>267</sup>

A report under proposed Item 10.01 would disclose the date the adviser plans to implement the material change to the affected fund’s objectives or policies, as well as a description of the material change. This description of the material change should help an investor understand the change and how it relates to the fund’s current investment objectives and policies.<sup>268</sup> Affected

<sup>264</sup> See rule 8b-16 under the Investment Company Act [17 CFR 270.8b-16].

<sup>265</sup> For these purposes, investment objectives or policies would mean the information specified in Item 8.2 of Form N-2. See proposed Instruction 1 to Item 10.01 of Form 8-K.

<sup>266</sup> A sub-adviser is typically responsible for the day-to-day portfolio management of some or all assets of a fund, subject to oversight by the fund’s adviser and board of directors. We understand that sub-advisory agreements already establish procedures for a sub-adviser to communicate with the adviser or board about matters related to a fund’s investment objectives or policies to, among other things, ensure that the fund’s assets are being managed consistently with its disclosed investment objectives or policies.

<sup>267</sup> See proposed Instruction 2 to Item 10.01 of Form 8-K. The most recent disclosure would be the later of the most recent version of the fund’s prospectus (*i.e.*, that included in the fund’s effective registration statement or as modified through post-effective amendments or prospectus supplements) or its most recent periodic report. A BDC’s most recent periodic report would be the most recently filed report on Form 10-Q or Form 10-K, while a registered CEF’s most recent periodic report would be the most recently filed annual or semi-annual report to shareholders under rule 30b2-1 under the Investment Company Act.

<sup>268</sup> The Form 8-K report should not, for example, solely discuss a new investment practice or technique without explaining how it relates to or modifies the fund’s most recent disclosure of its investment objectives and policies.

funds also may disclose other information related to a material change in investment objective or policy in a Form 8-K report filed under proposed Item 10.01. For example, an affected fund could disclose material changes in the fund's risk factors that are associated with the material change to its investment objective or policy.<sup>269</sup>

Affected funds engaged in a delayed or continuous offering of their securities are subject to other requirements to update the disclosure in their registration statements. A fund would not be required to file a Form 8-K report under proposed Item 10.01 if it provides substantially the same information in a post-effective amendment.<sup>270</sup> A fund that relies on the proposed short-form registration instruction could, however, update its registration statement by filing a Form 8-K report instead of a post-effective amendment.<sup>271</sup> A registered CEF relying on rule 8b-16(b) to avoid updating its registration statements on an annual basis would continue to be required to disclose in its annual report to shareholders any material change in its investment objectives or policies.<sup>272</sup>

We request comment on our proposal to require Form 8-K disclosure if an affected fund's adviser has determined to make a material change to the fund's investment objectives or policies:

- Should a report under proposed Item 10.01 include different information than what we have proposed? Are there additional types of information that would be helpful to investors or the

market? For example, should affected funds be required to report under proposed Item 10.01 any changes to principal risk factors that accompany a material change to the fund's investment objectives or policies that the fund discloses in such report? Why or why not?

- Current disclosure on Form 8-K is generally required within 4 business days after the relevant event occurs.<sup>273</sup> Should we modify the timeframe in which an affected fund must file a report under proposed Item 10.01? If so, what is a more appropriate timeframe, and why should the reporting timeframe be different for proposed Item 10.01 than the reporting timeframe for other items under Form 8-K? Rather than require disclosure within 4 business days after an affected fund's adviser has determined to implement a material change to the fund's investment objectives or policies, should we require an affected fund to file a report on Form 8-K concurrent with, or before, any material change to the fund's investment objectives or policies? Would this approach be administratively easier or more difficult for funds to implement in practice? Would this approach raise front-running concerns or impact the usefulness of information to investors or the market more generally?

- Is there a standard industry practice for approving a material change to a fund's investment objectives or policies before it is implemented? If so, is there a particular step in the approval process that should trigger the obligation to file a Form 8-K report under proposed Item 10.01? If there is not a standard industry practice, how could we modify the proposal to achieve more consistent reporting across affected funds? Are there differences between the approval process for funds with a single adviser and funds with one or more sub-advisers that we should take into account? <sup>274</sup>

- Instead of generally requiring current disclosure on Form 8-K before a material change to the fund's investment objectives or policies is implemented, should we require Form 8-K disclosure after the adviser has begun to implement the material change? If so, when should we require disclosure? For example, should we require Form 8-K disclosure when the fund's investment portfolio has changed by a defined threshold (such as a 5% or 10% change in total assets invested in a particular industry, asset type,

geography, or credit quality)? What are the advantages and disadvantages of this approach, including the impact on investors of less timely disclosure?

- Should we exempt registered CEFs from the requirement in rule 8b-16 to report material changes to a fund's investment objectives or policies in its annual report if they have already reported the change on Form 8-K? Why or why not?

- BDCs are required to disclose material changes to their risk factors on a quarterly basis, while registered CEFs are generally required to make this disclosure on an annual basis.<sup>275</sup> Should registered CEFs be required to provide updated disclosure about material changes to risk factors on a more frequent basis, such as semi-annually in their shareholder reports? Why or why not?

## ii. Material Write-Downs

Item 2.06 of Form 8-K requires a registrant to report certain information if it concludes that a material charge for impairment to one or more of its assets is required under GAAP applicable to the registrant. Because affected funds use fair value accounting to value their investments, Item 2.06 does not apply to them.<sup>276</sup> To provide investors with consistent information and to promote parity with operating companies, we are proposing a new Form 8-K reporting item that is conceptually similar to Item 2.06, but tailored to the accounting method used by affected funds. Specifically, proposed Item 10.02 would require reporting if an affected fund concludes that a material write-down in fair value of a significant investment is required under GAAP applicable to the affected fund. An affected fund would have a reporting obligation under this item once a conclusion that a material write-down is required is made in accordance with the fund's valuation procedures.

We believe a material decline in the valuation of one or more significant investments of an affected fund would be important to investors. Such a decline would likely have a significant impact on the value of an investment in

<sup>275</sup> See *supra* footnote 269.

<sup>276</sup> In defining "value," section 2(a)(41) of the Investment Company Act distinguishes between the market value of securities for which market quotations are readily available and the fair value, as determined in good faith by the board of directors, of other securities and assets. See 15 U.S.C. 80a-2(a)(41). Fair value accounting, as that term is used in GAAP, refers to the method investment companies use to value all investments, regardless of the availability of market quotations. Consistent with GAAP, we use fair value in proposed Item 10.02 to refer to the method for valuing any investment of an affected fund.

<sup>269</sup> Affected funds are otherwise required to disclose material changes in risk factors in periodic or annual reports. See Item 1A to Part II of Form 10-Q (requiring BDCs to disclose any material change to risk factors previously disclosed in its annual report on Form 10-K); rule 8b-16(b)(4) (requiring registered CEFs to disclose any material change in the principal risk factors associated with investment in the fund in its annual report to shareholders).

<sup>270</sup> See proposed Instruction 3 to Item 10.01 of Form 8-K.

<sup>271</sup> See *supra* Part II.B.2.a. If the material change in the fund's investment objectives or strategies involves facts or events that, individually or in the aggregate, represent a fundamental change in the information set forth in the fund's registration statement and the fund discloses this change on Form 8-K in lieu of filing a post-effective amendment, the date the fund filed the Form 8-K report would be a new effective date of its registration statement for purposes of the last paragraph of section 11(a) of the Securities Act. See rule 158(c)(3) under the Securities Act [17 CFR 230.158(c)(3)].

<sup>272</sup> See *supra* Part II.H.3.a (discussing our determination to not propose to remove or otherwise modify current disclosure requirements for registered CEFs that are similar to reportable events under Form 8-K). Additionally, we believe annual report disclosure of all material changes to a fund's investment objectives or policies that have occurred over the past year would continue to benefit shareholders.

<sup>273</sup> See General Instruction B.1 of Form 8-K.

<sup>274</sup> See *supra* footnote 266 (discussing sub-advisers).

the fund. Further, unlike open-end funds, which must maintain sufficiently liquid assets in order to provide daily redemptions (and generally must limit their investments in illiquid securities to 15% of the fund's assets),<sup>277</sup> affected funds often invest more significantly in less liquid investments where there is less publicly-available information surrounding events that may impact valuations.<sup>278</sup> We recognize that affected funds—particularly registered CEFs—may hold a range of investment types, including liquid securities that have publicly-available pricing information. While investors may have less need for current disclosure on Form 8-K regarding a material write-down of an investment that has public pricing information, we propose to require affected funds to report a material write-down of any investment type, provided the investment is a significant size of the fund's portfolio. Capturing all investment types would provide greater and more uniform information to investors about potentially significant changes to the value of their investment in an affected fund. We propose to balance the broad scope of investment types that could trigger a reporting obligation by limiting this reporting item to only those investments that are significant in size.

Under proposed Item 10.02 of Form 8-K, an affected fund would be required to report the date it concluded that a material write-down in fair value was required and an estimate of the amount or range of amounts of the material write down. Although affected funds may not assess valuations of their investments on a continuous (*i.e.*, daily or weekly) basis and are generally only required to calculate their NAVs at discrete times under the Investment Company Act (*e.g.*, prior to selling shares or in connection with their periodic reports), we understand that affected funds typically monitor and review investment valuations between their periodic reports, particularly if a significant event occurs that is likely to impact the value of one or more sizable investments. An affected fund would be required to report on Form 8-K if it concludes that a material write-down of

a significant investment is required in connection with this process. We recognize that a fund may write down the fair value of an investment for a variety of reasons, including company-specific considerations or events (such as bankruptcy) or macro-level events that cause a market decline in a certain sector or type of security. An affected fund would not be required to disclose the reasons it determined that a material write-down of a significant investment is required.

With respect to the requirement to report an estimate of the amount or range of amounts of the material write down, an affected fund would not be required to disclose an estimate in its initial report on Form 8-K if it was unable to make a good faith estimate at the time it was required to file a Form 8-K report. However, the affected fund would be required to file an amended report on Form 8-K under this item within 4 business days after it makes a determination of the estimate or range of estimates. This approach is similar to current reporting by operating companies under Item 2.06 of Form 8-K. We believe that this requirement would be more relevant for less liquid investments where the affected fund has discretion under GAAP to determine fair value.

Instruction 1 to proposed Item 10.02 would clarify the meaning of a “significant” investment for these purposes.<sup>279</sup> An investment would be considered significant if the affected fund's and its other subsidiaries' investments in a portfolio holding exceed 10% of the total assets of the registrant and its consolidated subsidiaries.<sup>280</sup> We are proposing that an investment be greater than 10% of the affected fund's total assets to be significant for these purposes to focus on material write-downs that may substantially affect a fund's NAV and, thus, would be of greater interest to investors. A 10% threshold also is consistent with our definition of

acquisitions and dispositions that involve a significant amount of assets for purposes of Item 2.01 of Form 8-K.<sup>281</sup> To determine whether a portfolio holding is significant, an affected fund would be required to aggregate investments in the same issuer.<sup>282</sup> An affected fund would use the valuation of the portfolio holding prior to the material write-down to determine whether such holding exceeds 10% of total assets and, thus, is a significant investment.

Like Item 2.06 of Form 8-K, an affected fund would not have to file a report under proposed Item 10.02 if the conclusion to materially write down a significant investment is made in connection with the preparation, review, or audit of financial statements required to be included in the next periodic report under the Exchange Act, the periodic report is filed on a timely basis, and such conclusion is disclosed in the report.<sup>283</sup>

Rather than propose to require Form 8-K disclosure about a material write-down of a significant investment, we considered proposing to require an affected fund to disclose a significant decline in the value of its investment portfolio as a whole. Specifically, we considered requiring an affected fund to report on Form 8-K when its NAV declines by more than 10% over a specified period. We recognize investors may have an interest in significant NAV declines for affected funds in which they invest since, like a material write-down, a significant decline in NAV will likely impact the value of their investments and may be useful to inform investment decisions.<sup>284</sup> Additionally, a requirement to report a significant decline in NAV would more broadly apply to all affected funds, while the proposed material write-down requirement only applies to affected funds that hold large investments in a

<sup>281</sup> See Instruction 4 to Item 2.01 of Form 8-K.

<sup>282</sup> For example, if an affected fund held debt and equity securities issued by Company A, it would need to consider the percentage of total assets invested in Company A securities in the aggregate to determine whether it had a significant investment under proposed Item 10.02.

<sup>283</sup> See Instruction to Item 2.06 of Form 8-K; proposed Instruction 3 to proposed Item 10.02 of Form 8-K. The relevant periodic reports for registered CEFs would be annual and semi-annual reports to shareholders on Form N-CSR, while the relevant periodic reports for BDCs would be quarterly and annual reports on Form 10-Q and Form 10-K.

<sup>284</sup> While shares of an affected fund do not necessarily trade at NAV, information about an affected fund's NAV could help the market to price an affected fund's shares in certain circumstances and could help an investor otherwise make investment decisions, including by being able to better assess the price of a fund's shares.

<sup>277</sup> See rule 22e-4 under the Investment Company Act [17 CFR 270.22e-4]; Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)].

<sup>278</sup> For example, there is often little information publicly available about private small and mid-sized businesses in which BDCs often invest. While an investor has access to a BDC's schedule of investments and the fair value of such investments on a quarterly basis, the investor generally has little insight into the operations of a portfolio company or events that may impact its value.

<sup>279</sup> Item 2.06 of Form 8-K requires an operating company to report a material charge for impairment to one or more of its assets, including, without limitation, impairments of securities or goodwill. For purposes of affected funds, we believe it is appropriate to limit the requirement to report material write-downs to only those fund investments that are of a significant size relative to the fund's total portfolio. These material write-downs would be more likely to substantially affect a fund's NAV and would be more relevant to investors.

<sup>280</sup> Based on staff analysis, approximately 14% of affected funds hold investments that are greater than 10% of total assets. We anticipate that fewer funds would be required to file Form 8-K reports under the proposed item since a reporting obligation is not triggered unless a material write-down occurs.

single issuer.<sup>285</sup> This broader scope could potentially enhance the information available to investors.

However, a requirement to report significant declines in NAV could result in a large amount of Form 8-K reporting by affected funds in the event of a general market downturn or, for funds invested in a particular sector, a downturn in that sector. Moreover, investors may already have access to readily-available public information (such as news reports, disclosure of fund strategies and portfolio holdings, and daily or weekly NAV information for some funds) that could reduce the value of this reporting. For example, with respect to affected funds that already publicly disclose their NAVs on a daily or weekly basis,<sup>286</sup> Form 8-K reporting about declines in these funds' NAVs could be less timely than information that is already available to the market. Since affected funds publish their NAVs at different frequencies—from semi-annual to daily NAV reporting—there also is not a clear baseline for measuring declines in NAV across all affected funds. This variability likely would either result in inconsistent reporting standards for affected funds (e.g., if the 10% decline was measured from the most-recently published NAV) or reporting of stale information (e.g., if the 10% decline was measured from the NAV a registered CEF disclosed in its most recent semi-annual shareholder report, even if it publishes a daily NAV). Given these concerns, we preliminarily believe that the requirement to report material write-downs of significant investments in proposed Item 10.02 would be more likely to provide investors with timely, relevant, and consistent information that they cannot otherwise discern from currently-available public disclosures.

We request comment on proposed Item 10.02 of Form 8-K, including potential alternatives for providing investors and the market with timely information about declines in the value of an affected fund's portfolio:

- Should a report under proposed Item 10.02 include different information than what we have proposed? Are there additional types of information that would be helpful to investors or the market?
- Should we modify the timeframe in which an affected fund must file a report under proposed Item 10.02? If so, what is a more appropriate timeframe,

and why should the reporting timeframe be different for proposed Item 10.02 than the reporting timeframe for other items under Form 8-K, particularly Item 2.06?

- Should proposed Item 10.02 only require an affected fund to report a material write-down of certain types of investments, such as investments for which there are no readily available market quotations or investments that do not have publicly-available pricing information? For any investment types that should be excluded, please discuss the potential impact on investors (e.g., whether investors have existing sources of information to identify material declines in the value of significant portfolio holdings of an affected fund) and affected funds (e.g., the impact of the exclusion on an affected fund's reporting burden under proposed Item 10.02).

- Should we limit proposed Item 10.01 to certain types of affected funds? For example, do affected funds that consistently publish daily NAVs provide sufficient information to investors and the market about the value of their portfolios such that information about material write-downs would not be important?

- Should we modify our proposed definition of a significant investment to capture a smaller or larger investment size? If so, what is a more appropriate definition of significant investment for purposes of proposed Item 10.02, and why?

- Should a reporting obligation be triggered under proposed Item 10.02 when the affected fund concludes, in accordance with its valuation procedures, that a material write-down is required under GAAP, as proposed? Does this approach establish a sufficiently concrete guideline for determining when a reporting obligation has been triggered? If not, under what circumstances should an affected fund be required to report about a material write-down determination?

- Should the determination of a significant investment account for a group of investments in the same issuer that are significant in the aggregate? If not, why not? Should a fund also be required to aggregate derivatives investments that provide exposure to the same issuer or reference asset under certain circumstances? If so, when? If an affected fund were required to aggregate derivatives contracts, what values should it use? Because the market value of a derivatives contract will generally be small and will not reflect the market exposure provided by the contract, would it be more appropriate for a fund to aggregate the value of the underlying

reference asset rather than the value of the derivatives contracts? Why or why not?

- Should we allow an affected fund to not file a Form 8-K report if the conclusion that a material write-down is required is made in connection with the preparation, review, or audit of financial statements required to be included in its next Exchange Act periodic report, the periodic report is timely filed, and the conclusion is disclosed in the report, as proposed? Why or why not?

- Do affected funds need more guidance on how to calculate whether a portfolio holding is a significant investment or on any other aspects of proposed Item 10.02?

- Instead of requiring affected funds to report material write-downs of significant investments on Form 8-K, should we require affected funds to use a different approach to provide information about declines in the value of their portfolio investments? For example, should we require affected funds to file Form 8-K reports when their NAVs decline by a specified percent (such as more than 10%) over a specified period? If so, what is the appropriate baseline for measuring a decline in NAV since affected funds publish their NAVs at different frequencies? For instance, should a NAV decline be measured against the most recently published NAV or the NAV disclosed in the fund's most recent periodic report? Is information about a NAV decline relevant for all affected funds, or should this requirement be limited to a subset of affected funds (e.g., those that do not publish a NAV on a daily basis or those that invest in less liquid investments that lack publicly-available pricing information)? How should such a Form 8-K reporting requirement interact with the undertaking in Item 34.1 of Form N-2?<sup>287</sup> What information should we require in a Form 8-K report about a significant decline in NAV (e.g., the amount of the NAV decline, the date of the determination, and the associated impacts on the fund or its investors)?

iii. Impact on Eligibility Under the Proposed Short-Form Registration Instruction of Form N-2 and Safe Harbor

While operating companies generally must timely file Exchange Act reports to be eligible to use Form S-3, there is an

<sup>285</sup> See *supra* footnote 280.

<sup>286</sup> For example, many listed registered CEFs publicly disclose daily or weekly NAVs. See, e.g., Barron's Market Data Center for Closed-End Funds, available at [http://www.barrons.com/mdc/public/page/2\\_3040-CEFmain.html](http://www.barrons.com/mdc/public/page/2_3040-CEFmain.html).

<sup>287</sup> This undertaking provides that an affected fund will amend its prospectus and suspend its offering in the interim if subsequent to the effective date of its registration statement, the NAV declines by more than 10% from its NAV as of the effective date of the registration statement. See Item 34.1 of Form N-2.

exception for failing to timely file reports under certain Form 8-K items.<sup>288</sup> Separately, companies that are required to report on Form 8-K have a limited safe harbor from Exchange Act section 10(b) and rule 10b-5 if they fail to file a report under many of the same Form 8-K items.<sup>289</sup> For parity, we propose to implement this same general approach for affected funds.

As a general matter, the Commission has excluded Form 8-K items from the timeliness requirement of Form S-3 and provided a limited safe harbor for Form 8-K items when they require management to quickly assess the materiality of an event or to determine whether a disclosure obligation has been triggered.<sup>290</sup> Thus, we believe it would be appropriate to allow affected funds to file short-form registration statements even if they fail to timely file reports required solely under proposed Items 10.01 or 10.02, in addition to the other Form 8-K items identified in Form S-3.<sup>291</sup> We also propose to extend the safe harbor to proposed Items 10.01 and 10.02.

Like operating companies that use Form S-3, an affected fund that elects

<sup>288</sup> Form S-3 requires, among other things, that a registrant has timely filed its required reports, other than reports required solely pursuant to Items 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), or 5.02(e) of Form 8-K. See General Instruction I.A.3(b) of Form S-3.

<sup>289</sup> See rules 13a-11(c) and 15d-11(c) under the Exchange Act [17 CFR 240.13a-11(c) and 17 CFR 240.15d-11(c)] (providing a limited safe harbor for failing to timely file a report required solely pursuant to Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), or 6.03 of Form 8-K). Notably, the safe harbor only applies to a failure to file a report on Form 8-K. It does not provide protection from section 10(b) and rule 10b-5 where an affected fund has a duty to disclose information for any reason apart from the Form 8-K requirement. See 2004 8-K Adopting Release, *supra* footnote 245, at 15607. For example, the safe harbor would not protect a fund that files a short-form registration statement from liability under section 10(b) or rule 10b-5 (or other provisions of the federal securities laws) if the fund was engaged in an offering and its failure to file a Form 8-K report under an item covered by the safe harbor would result in the fund having a material misstatement or omission in its registration statement. See, e.g., section 10 of the Exchange Act [15 U.S.C. 78j]; sections 11, 12(a)(2), and 17(a) of the Securities Act [15 U.S.C. 77k, 77l(a)(2), and 77q(a)]; rule 10b-5 under the Exchange Act [17 CFR 240.10b-5]; rule 159 under the Securities Act [17 CFR 230.159].

<sup>290</sup> The Commission also has considered whether a company's sudden loss of eligibility to use Form S-3 under the circumstances could cause a potentially significant negative consequence that is disproportionate to an untimely Form 8-K filing. See 2004 8-K Adopting Release, *supra* footnote 245, at 15606-07.

<sup>291</sup> See proposed General Instruction A.2.a of Form N-2. Thus, an affected fund's failure to timely file a report required solely pursuant to Item 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 10.01, or 10.02 would not affect the fund's ability to meet the terms of General Instruction I.A.3(b) of Form S-3 for purposes of the short-form registration instruction of Form N-2.

to file a short-form registration statement on Form N-2 would need to be current in its Form 8-K filings with respect to all required items at the actual time of a Form N-2 filing.<sup>292</sup> In addition, consistent with the approach for operating companies, the safe harbor from section 10(b) and rule 10b-5 included in rules 13a-11 and 15d-11 would extend only until the due date of the affected fund's periodic report for the relevant period in which the Form 8-K was not timely filed.<sup>293</sup> While we recognize that linking reporting compliance with continued eligibility to file a short-form registration statement on Form N-2 may result in loss of access to shelf registration, other issuers have long faced similar consequences. We believe it would be appropriate to extend the same treatment to affected funds to provide parity with operating companies, consistent with the BDC Act and Registered CEF Act, and in recognition of the important role of timely Exchange Act reporting in the shelf registration system.<sup>294</sup>

We request comment on the proposed impact of delinquent Form 8-K filings on eligibility to file a short-form registration statement on Form N-2 and our proposed safe harbor amendments, particularly with respect to proposed Items 10.01 and 10.02:

- Should an affected fund lose its eligibility to file a short-form registration statement on Form N-2 or be disqualified from the safe harbor from section 10(b) and rule 10b-5 if it fails to timely report under proposed Items 10.01 or 10.02? If so, why should proposed Item 10.02 be treated differently than Item 2.06 of Form 8-K?
- Should affected funds be eligible to use the short-form registration instruction if they fail to timely file Form 8-K reports under other items, beyond those we have proposed? If so, which items, and why should affected funds be treated differently than operating companies for these purposes?
- For purposes of the safe harbor, should a registered CEF be required to disclose Form 8-K information that it has failed to timely report on a more

frequent basis than semi-annually, given that BDCs and operating companies must disclose such information on a quarterly basis? If so, how should we implement such a change since registered CEFs are not subject to similar quarterly reporting requirements?

#### c. Additional Amendments to Form 8-K for Affected Funds

We are proposing certain modifications to the General Instructions in Form 8-K, as well as instructions relating to specific reporting items, to make them more applicable to affected funds, particularly registered CEFs. These modifications will only apply to affected funds.

With respect to the General Instructions to Form 8-K, we propose to add a modified definition of "previously reported" in General Instruction B.3 for registered CEFs. Currently, this instruction makes it clear that registrants are not required to report on Form 8-K if they have previously reported substantially the same information in a statement under section 12 of the Exchange Act, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14, or a registration statement under the Securities Act.<sup>295</sup> To recognize that registered CEFs also may report information under the Investment Company Act, we propose to amend the instructions to make it clear that registered CEFs are not required to make an additional report on Form 8-K if they have previously reported an event or transaction in a publicly-available filing described in rule 8b-2(i) of the Investment Company Act.<sup>296</sup> This will include certain reports filed under section 30 and registration statements filed under section 8 of the Investment Company Act. Similarly, we propose to add a reference to registration statements filed under the Investment

<sup>295</sup> See rule 12b-2 under the Exchange Act [17 CFR 240.12b-2] (defining "previously reported").

<sup>296</sup> See rule 8b-2(i) under the Investment Company Act [17 CFR 270.8b-2(i)] (defining "previously reported" to include a registration statement filed under section 8 of the Investment Company Act or under the Securities Act, a report filed under section 30 of the Investment Company Act or section 13 or 15(d) of the Exchange Act, a definitive proxy statement filed under section 20 of the Investment Company Act or section 14 of the Exchange Act, or a prospectus filed under the Securities Act). This proposal would not prevent a registered CEF from reporting on Form 8-K information previously reported in a section 30 report for purposes of forward incorporating such information into the registration statement by reference.

<sup>292</sup> See General Instruction A.2.a of Form N-2; General Instruction I.A.3(a) of Form S-3.

<sup>293</sup> This is already the case for BDCs since they are required to file periodic reports on Form 10-Q and Form 10-K. See Item 5 of Form 10-Q and Item 9B of Form 10-K; 2004 Form 8-K Adopting Release, *supra* footnote 245, at 15607. We are proposing to add new Instruction 6.h to Item 24 of Form N-2 to require a registered CEF to disclose in its next shareholder report any information that it was required to disclose in a report on Form 8-K for the relevant half-year period but did not disclose.

<sup>294</sup> See *supra* Part II.B.2.a (discussing the importance of the timely reporting requirement for purposes of Form S-3 and the proposed Form N-2 short-form registration instruction).

Company Act in General Instruction B.5.<sup>297</sup>

As for the amendments to existing reporting items, we are proposing clarifications to the instructions for Items 2.02 and 3.02 of Form 8-K to extend certain allowances to affected funds. With respect to Item 2.02 (Results of Operations and Financial Condition), Instruction 4 to this Item currently states that a registrant is not required to report information under the Item when it is disclosing its results of operations and financial condition in a quarterly report on Form 10-Q or an annual report on Form 10-K. Since registered CEFs do not report information on these forms, we are proposing to provide the same treatment to shareholder reports that registered CEFs file with the Commission under rule 30b2-1 under the Investment Company Act.<sup>298</sup> Similarly, Instruction 2 to Item 3.02 (Unregistered Sales of Equity Securities) allows smaller reporting companies to sell a larger percentage of unregistered securities (relative to the number of shares outstanding of the relevant class of equity securities) than other registrants before triggering a Form 8-K reporting obligation,<sup>299</sup> but small affected funds would be unable to rely on the current provision.<sup>300</sup> We propose to revise Instruction 2 to Item 3.02 to allow small affected funds to use the same 5% threshold available to smaller reporting companies.<sup>301</sup>

<sup>297</sup> Amended General Instruction B.5 would provide that, when considering current reporting on Form 8-K, particularly under Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events), registrants should have due regard for the accuracy, completeness, and currency of information in registration statements filed under the Securities Act and the Investment Company Act that incorporate by reference information in Exchange Act reports, including reports on Form 8-K.

<sup>298</sup> Rule 30b2-1 requires registered management investment companies to file on Form N-CSR any shareholder report required to be transmitted to shareholders under rule 30e-1 and to file a copy of every periodic or interim report or similar communication containing financial statements that is transmitted to a class of shareholders. See 17 CFR 270.30b2-1.

<sup>299</sup> This threshold is less than 5% for smaller reporting companies and less than 1% for other registrants.

<sup>300</sup> Instruction 2 to Item 3.02 currently refers to smaller reporting companies, as defined in Item 10(f)(1) of Regulation S-K. This definition excludes issuers that are investment companies.

<sup>301</sup> We are proposing that an affected fund would be treated like a smaller reporting company for these purposes if it was an investment company identified in 17 CFR 270.0-10 (rule 0-10 under the Investment Company Act). An investment company is considered small under rule 0-10 if the investment company, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. See 17 CFR 270.0-10.

We request comment on our additional proposed amendments to Form 8-K:

- For purposes of General Instruction B.3 of Form 8-K, are there specific reports that a registered CEF makes under section 30 of the Investment Company Act that we should exclude or include in the definition of “previously reported,” such that a registered CEF would or would not be required to report information on Form 8-K if it previously reported substantially the same information in the relevant report? For example, should the definition of “previously reported” include information reported on Form N-CEN and information publicly reported on Form N-PORT, as proposed?

- With respect to asset-backed securities, Item 1.03 of Form 8-K requires reporting if certain material parties to the asset-backed security enter bankruptcy proceedings or receivership. Should an affected fund be required to file a report on Form 8-K if its investment adviser enters bankruptcy or receivership? Why or why not?

- Is our proposed approach to modifying the definition of “smaller reporting companies” for affected funds appropriate? If not, what category of affected funds should qualify as smaller reporting companies for purposes of Item 3.02 of Form 8-K? For example, should we use a standard similar to that in Item 10(f)(1) of Regulation S-K to define a smaller reporting company?

- Are there other amendments we should make to Form 8-K to improve current reporting by affected funds or to give them comparable treatment to operating companies required to report on Form 8-K?

#### d. Rule 103 of Regulation FD

Rule 100 of Regulation FD generally requires an issuer to make either simultaneous or prompt public disclosure of any material nonpublic information regarding the issuer or its securities that the issuer or a person acting on its behalf has selectively disclosed to certain parties.<sup>302</sup> As recognized above, an issuer may make this public disclosure by filing or furnishing information on Form 8-K.<sup>303</sup> Rule 103(a) of Regulation FD provides that an issuer's failure to make a public disclosure required solely by rule 100 of Regulation FD will not affect whether, for purposes of eligibility to use Form S-3 and certain other forms, an issuer is deemed to have filed all materials

required to be filed pursuant to section 13 or section 15(d) of the Exchange Act (*i.e.*, whether the issuer is “seasoned”) or to have filed such materials in a timely manner (*i.e.*, whether the issuer is “timely”).<sup>304</sup> The BDC Act requires us to amend rule 103(a) to provide that, with respect to BDCs, this section applies for purposes of Form N-2.<sup>305</sup> To implement the BDC Act, and to provide parity for affected registered funds consistent with the Registered CEF Act, we propose to amend rule 103(a) to add references to Form N-2. As a result, for purposes of amended Form N-2, we would not consider an affected fund to have failed to file materials it is required to file pursuant to section 13 or section 15(d) of the Exchange Act, or to have failed to file these materials in a timely manner, if the affected fund fails to make public disclosure that is required solely by rule 100 of Regulation FD. Thus, failure to make a public disclosure required solely under rule 100 of Regulation FD would not impact an affected fund's ability to file a short-form registration statement or qualify as a WKSI.

We request comment on our proposed amendment to rule 103 of Regulation FD:

- Do our proposed amendments to rule 103 of Regulation FD provide affected funds with comparable treatment to operating companies? If not, why not?

#### 4. Online Availability of Information Incorporated by Reference

Above, we discuss our proposal to permit expanded incorporation by reference for affected funds that choose to file a short-form registration statement on Form N-2.<sup>306</sup> We are, in addition, proposing revisions to Form N-2's current General Instruction for Incorporation by Reference, which permits all registered CEFs and BDCs (not just those that would be eligible to file the proposed short-form registration statement) to backward incorporate their financial information into the prospectus or SAI. Specifically, we are proposing to remove the requirement that a fund deliver to new investors information that it has incorporated by reference into the prospectus or SAI, and instead require the fund to make its prospectus, SAI, and the incorporated materials readily available and

<sup>304</sup> 17 CFR 243.103(a); Selective Disclosure and Insider Trading, Exchange Act Release No. 43154 (Aug. 15, 2000) [65 FR 51716, 51725-26 (Aug. 24, 2000)].

<sup>305</sup> See section 803(b)(2)(O) of the BDC Act.

<sup>306</sup> See *supra* footnote 47 and accompanying text.

<sup>302</sup> 17 CFR 243.100 (requiring simultaneous public disclosure in the case of an intentional selective disclosure or prompt public disclosure in the case of a non-intentional selective disclosure).

<sup>303</sup> See *supra* footnote 251.



accessible on a website.<sup>307</sup> Our proposal is designed to make readily available to investors documents that are incorporated by reference, and to facilitate the efficient use of incorporation by reference by affected funds.<sup>308</sup>

Although all registered CEFs and BDCs can “backward incorporate” certain financial information from previous Commission filings into their registration statements, Form N-2 currently requires that a fund provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI.<sup>309</sup> For example, if the fund sells shares to a new investor, it must deliver to them the prospectus, along with the financial statements (or any other information) that is incorporated by reference into the prospectus. We understand that this requirement creates particular challenges for BDCs, which generally do not take advantage of the backward incorporation permitted by Form N-2 because they are required to include their financial statements in the prospectus.<sup>310</sup> That means that if a BDC incorporates its financial statements by reference into the prospectus, every time it delivers a prospectus to an investor, it must determine whether the investor is a new investor, and if so, must also deliver any incorporated material. To avoid the operational challenges associated with identifying and providing different disclosure documents to new and existing investors, BDCs instead generally set forth the required financial and related information in the prospectus, which can double or even triple the length of a BDC’s prospectus. Registered CEFs, in contrast, are required to include their

financial statements in the SAI,<sup>311</sup> which is delivered only upon request. Because we understand that funds typically receive very few requests for the SAI, registered CEFs, unlike BDCs, are only minimally affected by the requirement to deliver incorporated materials to new investors.

This proposal is designed to make readily available to investors documents that are incorporated by reference by requiring an affected fund to make the incorporated materials, and the corresponding prospectus and SAI, readily available and accessible on a website maintained by or for the fund, as identified in the fund’s prospectus and SAI.<sup>312</sup> Affected funds would also be required to provide incorporated materials upon request free of charge. We do not believe that this proposal would result in a substantial reduction in the amount of information affected funds deliver to investors through the mail or electronically because most affected funds would rely on rules 172 and 173, as we propose to amend them, to satisfy their prospectus delivery obligations. An issuer that uses these rules would satisfy its final prospectus delivery obligations by filing the prospectus with the Commission rather than delivering the prospectus and any incorporated materials to investors.<sup>313</sup>

These proposed requirements mirror parallel requirements for certain operating companies that incorporate by reference, and the requirement to put a fund’s prospectus and SAI on a website is consistent with requirements for open-end funds that choose to use a summary prospectus.<sup>314</sup> In addition, many funds currently post their annual and semi-annual reports and other fund information on their websites.<sup>315</sup> Given

that the website posting of these types of disclosure documents has become commonplace for many operating companies and most funds, we believe it is reasonable to require an affected fund that chooses to incorporate by reference to post its prospectus and SAI online, along with any Exchange Act materials incorporated into those documents,<sup>316</sup> and that investors likely expect to be able to access this information on fund websites. Retail investors, in particular, may be more inclined to look to a fund’s website for its disclosure documents before turning to other sources for information.<sup>317</sup> A retail investor also could request to receive the materials directly.

Finally, we are proposing to streamline Form N-2’s current provisions regarding the disclosure requirements for incorporation by reference, which are spread across several provisions in current General Instruction F. We propose to replace these current instructions with a new General Instruction F.4, which largely mirrors the disclosure requirements in Item 12(c) of Form S-3. The new instruction largely streamlines—but does not substantively change—the disclosure requirements for incorporation by reference currently in Form N-2.<sup>318</sup> The requirement to disclose the fund’s website where the incorporated information may be accessed is a new addition, and is related to the proposed online

address specified in a notice to investors); Enhanced Disclosure and New Prospectus Delivery Option for Registered Open End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (requiring open-end funds that opt to deliver summary prospectuses to investors to post prospectus and other disclosure materials on their websites).

<sup>316</sup> A fund must also deliver the incorporated materials upon request, at no charge. *See* proposed General Instruction F.4.b of Form N-2. Investors without internet access, or those that prefer not to review incorporated materials on a website, could obtain copies of the materials directly from the fund.

<sup>317</sup> Investor testing that the Commission sponsored and conducted in 2011 suggested that an investor looking for a fund’s annual report is most likely to seek it out on the fund’s website, rather than request it by mail or phone or by retrieving it from our Electronic Data, Gathering, Analysis, and Retrieval System (“EDGAR”). *See* Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590, 33626–27 (June 12, 2015)].

<sup>318</sup> *Compare* proposed General Instruction F.4.b with current General Instruction F.3 of Form N-2; *cf.* Item 12(c) of Form S-3. For example, the proposed instruction, similar to Form N-2’s current instruction, would require a fund to state in the prospectus and SAI that it will provide upon request a copy of the information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI, and provide contact information for any request for incorporated information.

<sup>307</sup> Proposed General Instruction F.4.a of Form N-2 would require a fund to post its prospectus, SAI, and any periodic and current Exchange Act reports that are incorporated by reference on a website maintained by or for the fund. Proposed General Instruction F.4.b of Form N-2 would also require funds to provide to any person to whom a prospectus or SAI is delivered any materials that were incorporated by reference upon request, at no charge.

<sup>308</sup> We would also conform certain incorporation by reference provisions of Form N-2 to mirror parallel provisions in Form N-1A, which has been more recently amended. *See* proposed General Instruction F.2.a–c of Form N-2; *cf.* General Instruction D.1(a)–(c) of Form N-1A.

<sup>309</sup> *See supra* footnote 22. Current General Instruction F.3 of Form N-2 requires the material incorporated by reference to be provided with the prospectus and/or the SAI to each person to whom the prospectus and/or the SAI is sent or given, unless the person holds securities of the fund and otherwise has received a copy of the material.

<sup>310</sup> *See* Item 8.6.c and Instruction 1.b to Item 24 of current Form N-2.

<sup>311</sup> *See* Instruction 1.a to Item 24 of current Form N-2.

<sup>312</sup> Proposed General Instruction F.4.a of Form N-2; *cf.* General Instruction VII.F of Form S-1; Proposed General Instruction F.4.b(5) of Form N-2; *cf.* Item 12(c)(1)(v) of Form S-1. We would eliminate current General Instruction F.3, and move its requirement directing a fund to state in the prospectus and SAI that it will furnish, without charge, a copy of the incorporated materials on request, to proposed General Instruction F.4.b.

<sup>313</sup> *See supra* Part II.D.

<sup>314</sup> *Cf.* General Instruction VII.F of Form S-1; Securities Act rule 498(e) [17 CFR 230.498(e)]. We also recently proposed rule 498A, which would, among other things, require variable annuity and variable life insurance contracts that choose to use a summary prospectus to post prospectus(es), SAI, and certain Exchange Act reports online. *See* Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172.

<sup>315</sup> *See also, e.g.,* Optional internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 5, 2018) [83 FR 29158 (June 22, 2018)] (providing funds the option of satisfying their obligations to transmit shareholder reports by making such reports and other materials accessible at a website



availability requirements for information that is incorporated by reference.

We request comment generally on these proposed revisions for incorporation by reference, including:

- Should we, as proposed, eliminate the requirement that funds provide a copy of incorporated materials to new investors and instead require funds to make the incorporated materials, prospectus, and SAI available on a website? Why or why not?

- Would this proposal negatively affect investors' ability to receive incorporated information in light of the proposal to permit affected funds to satisfy their final prospectus delivery obligations by filing their prospectus with the Commission under rule 172? If so, how? Would investors without internet access have difficulty requesting the incorporated materials from the fund?

- Form N-2 only permits an affected fund to backward incorporate certain financial information into its prospectus or SAI. We are not proposing to expand the scope of information that may be backward incorporated into a fund's registration statement. Are there other items in Form N-2 that we should also permit to be backward incorporated by reference? If so, which ones and why?

- Does our proposal to require affected funds that incorporate by reference to post on a website their prospectuses, SAIs, and periodic and current reports filed under the Exchange Act that are incorporated by reference into the prospectus or SAI pose any particular challenges for funds? Is there any reason why funds should not be required to post this information on a website if they incorporate the information by reference into their registration statement? Are there other technological approaches that we should consider to make available to investors the information that is incorporated by reference?

- The online posting requirement for incorporated materials, as proposed, mirrors similar requirements in Form S-1. Should we be more specific regarding the criteria for online posting, similar to the requirements for open-end funds that use summary prospectuses?<sup>319</sup> For example, should Form N-2 specify that the website maintained by or for the fund must be publicly-available, free of charge? Similarly, should we specify the format in which materials that are provided upon request must be

delivered (electronically or in paper)? In what format do funds that receive requests for incorporated materials currently deliver such documents?

- Our proposed amendments to Form N-2's current provisions regarding the disclosure requirements for incorporation by reference are designed to streamline—but not substantively change—the disclosure requirements for backward incorporation by reference currently in Form N-2. Do the proposed amendments have this effect?

- Are there any other changes we should make to the proposed incorporation by reference regime?

#### 5. Enhancements to Certain Registered CEFs' Annual Report Disclosure

As a general matter, registered investment companies are required to update their registration statements annually.<sup>320</sup> Registered CEFs may take advantage of an exemption that permits them to forgo an annual update provided that they disclose in their annual reports certain key changes that have occurred during the prior year.<sup>321</sup> For example, the fund must disclose any material changes in its investment objectives or policies that have not been approved by shareholders, and any material changes in the principal risk factors associated with an investment in the fund.<sup>322</sup> We are concerned, however, that funds disclosing important changes may not always provide enough context for investors to understand the implications of those changes. For example, if a fund does not provide sufficient context, a shareholder may have to look at a series of documents—from the fund's prospectus, which could be several years old, plus each subsequent annual report—to understand the fund's current investment strategy or principal risk factors.<sup>323</sup> This may burden investors

<sup>320</sup> Rule 8b-16 under the Investment Company Act requires all registered management investment companies, including registered CEFs, to update their registration statements with the Commission on an annual basis.

<sup>321</sup> Rule 8b-16(b).

<sup>322</sup> The rule 8b-16 exemption is conditioned on disclosure in the annual report of information that repeats or updates certain key prospectus disclosures, specifically: (1) Information about the fund's dividend reinvestment plan; (2) material changes in the fund's investment objectives or policies that have not been approved by shareholders; (3) any change concerning the fund's control provisions that has not been approved by shareholders; (4) material changes in the principal risk factors associated with an investment in the fund; and (5) any portfolio manager changes. Except for information about the fund's dividend reinvestment plan (which requires a complete description of the plan), the fund must only disclose changes that have occurred during the year covered by the annual report.

<sup>323</sup> See, e.g., Comment Letter from Amy Wellington (Sept. 3, 2018) (noting that there is no

and frustrate the goal of providing shareholders with important disclosures.

To allow investors in funds relying on rule 8b-16 to more easily identify and understand key information about their investments, we propose to amend the rule to require funds to describe any changes in enough detail to allow investors to understand each change and how it may affect the fund. For example, to the extent a fund's principal investment objectives and policies or principal risk factors have changed, the fund should describe its investment objectives or principal risk factors before and after the change. This would provide context for the change and identify for the investor the fund's current strategy or principal risk factors. We also propose to require funds to preface such disclosures with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, and also state that the summary may not reflect all of the changes that have occurred since the investor purchased the fund.<sup>324</sup>

We request comment on this proposal:

- Would requiring funds that rely on rule 8b-16 to describe changes to the fund in enough detail to allow investors to understand each change and how it may affect the fund, as proposed, improve the quality and scope of the disclosures that investors in these funds currently receive? To what extent are funds already doing this voluntarily?

- We also are proposing to require affected funds to report on Form 8-K if the fund's investment adviser, including any sub-adviser, has determined to implement a material change to the registrant's investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval. How would Form 8-K reports affect the benefits to

one location where a registered CEF investor can find a fund's strategies, risks and fees; because the annual report only discloses changes to the fund's strategies and policies, investors must review the original prospectus and each subsequent shareholder report to get all of the fund's information). This comment letter was provided in response to our June 2018 Investor Experience Request for Comment, *see infra* footnote 206, in which we sought input from individual investors on how to enhance fund disclosures.

<sup>324</sup> See proposed rule 8b-16(e) under the Investment Company Act (requiring changes required by paragraphs (b)(2) through (b)(5) of rule 8b-16 to be described in enough detail to allow investors to understand each change and how it may affect the fund, and prefaced with a legend stating that "[t]he following information [in this annual report] is a summary of certain changes since [date]. This may not reflect all of the changes that have occurred since you purchased [this fund].").

<sup>319</sup> Rule 498(e) under the Securities Act [17 CFR 230.498(e)] (mutual funds and ETFs); *see also* Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172 (proposing Securities Act rule 498A(h) for variable contracts).

investors of receiving contextual information in annual reports?

- Would a fund understand what level of detail the proposed rule amendments would require it to disclose? Would a fund understand what it means to describe how a change may affect the fund? Would any additional clarification in the rule text or guidance be helpful?

- What is the adequacy of information about registered CEFs in the secondary market in general? Where can investors in a fund with a stale prospectus look to find information about the fund's current strategies and risks, or other key information? Do registered CEF investors have access to sufficient information to make knowledgeable investment decisions concerning their investments in these funds?

- Should we require funds that rely on rule 8b-16 to update their registration statements on a periodic basis, for example, every 3 years, as required for certain issuers with shelf registration statements to bring the disclosures current? Alternatively, should we require funds to summarize in their annual report certain key information that would be required in a current prospectus that has been annually updated? If so, what information should be required (for example, only the disclosure items that are specified in rule 8b-16, or certain other Form N-2 disclosure items)? Should we consider making any other changes to rule 8b-16? If so, what changes and why?

#### *I. Certain Staff No-Action Letters*

Rule 486(b) permits interval funds to file certain post-effective amendments to their registration statement that become effective automatically, including an amendment to bring the financial statements up to date under section 10(a)(3). The rule is designed to recognize that interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically.<sup>325</sup> Our staff has stated that it would not recommend that the Commission take any enforcement action under section 5(b) or 6(a) of the Securities Act against specific listed registered CEFs conducting offerings

under rule 415(a)(1)(x) on a case-by-case basis regarding their use of rule 486(b).<sup>326</sup>

The amendments we are proposing today are designed to address the process by which affected funds, including listed registered CEFs offering their securities under rule 415(a)(1)(x), may update their registration statements. The amendments would provide a consistent regulatory framework for all affected funds. Staff in the Division of Investment Management are reviewing these no-action letters to determine if they should be withdrawn in connection with any final rules we adopt under this proposal.

We request comment on whether we should make any changes to rule 486(b) to address the concerns expressed by funds that sought no-action assurances from the staff:

- Should we, for example, permit all or a broader group of registered CEFs or BDCs to rely on the rule? Why or why not?
- To what extent would expanding the availability of rule 486(b) complement, or conversely, create any tension with, the amendments we are proposing in this release? For example, if we permitted all affected funds to rely on rule 486(b), would funds that would be eligible to file a short-form registration statement on Form N-2 choose to use rule 486(b) to update their registration statements, or would they choose to file a short-form registration statement and update it through Exchange Act reports incorporated by reference? Which approach would be more efficient for funds and why? Would either approach be more beneficial to investors? If so, which approach and why? Would using rule 486(b) be more or less efficient for BDCs or registered CEFs?

#### *J. Conforming Changes to Form N-2*

In addition to the proposed amendments to Form N-2 discussed throughout this release that are meant to implement the statutory mandates and tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules, we also are proposing certain non-substantive changes to the form. These additional proposed

changes are designed to provide greater consistency with similar or parallel provisions in Forms N-1A, S-1, and S-3, all of which have been more recently amended than Form N-2. For example, we are proposing stylistic changes, including the renumbering of certain items, and the elimination of outdated references, such as the instruction related to paper copies, which are generally no longer filed, and the requirement to provide a table of contents in an affected fund's SAI.<sup>327</sup>

We request comment on these proposed amendments to Form N-2:

- Do commenters agree that the proposed amendments to Form N-2 that are not discussed elsewhere in this release are appropriate?

- Because some affected funds have received exemptive relief to offer different share classes, our proposal to require registered CEFs to include MDFP in their annual shareholder reports includes an instruction requiring funds with multiple share classes to reflect the performance for each class. Should we revise Form N-2 to clarify any other disclosure requirements for multi-class funds?

- Are there additional stylistic or similar changes we should make to Form N-2 to provide greater consistency with similar or parallel provisions in our other disclosure forms or otherwise to improve Form N-2's readability? Which changes and why?

- Should we make any technical changes or corrections to Form N-2? For example, Instruction 1.a. to Item 8.6.c of Form N-2, which requires BDCs to include financial statements in the prospectus, directs BDCs to comply with provisions of Regulation S-X that apply to registered investment companies. This includes a cross-reference to rule 3-18 of Regulation S-X, which includes the financial statement timing requirements for registered investment companies. Rule 3-12 of Regulation S-X, however, specifically prescribes the age of financial statements for Exchange Act reporting companies, like BDCs, as a matter of practice follow rule 3-12. Should we revise the instruction to make clear that BDCs should follow the requirements in rule 3-12 (and not rule 3-18) for financial statement timing purposes? If not, why not?

<sup>325</sup> See Post-Effective Amendments to Investment Company Registration Statements, Securities Act Release No. 7083 (Aug. 17, 1994) [59 FR 43460 (Aug. 24, 1994)] (in adopting rule 486, we noted that "[t]he initial proposal of rule 486 recognized that closed-end interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically").

<sup>326</sup> See, e.g., Nuveen California Select Tax-Free Income Portfolio, SEC Staff No-Action Letter (Nov. 21, 2017), PIMCO Dynamic Income Fund, SEC Staff No-Action Letter (Dec. 12, 2017), Eagle Point Credit Company, Inc., SEC Staff No-Action Letter (Feb. 14, 2018), PIMCO Corporate & Income Opportunity Fund and PIMCO Income Opportunity Fund, SEC Staff No-Action Letter (Sep. 13, 2018), and DNP Select Income Fund, Inc., SEC Staff No-Action Letter (Oct. 4, 2018). Our staff has not provided these no-action assurances to any BDC.

<sup>327</sup> We have also adopted certain changes to Form N-2 in the FAST Act rulemaking. See FAST Act Modernization Adopting Release, *supra* footnote 177. Those amendments, as part of a broader initiative to modernize and simplify certain disclosure requirements in Regulation S-K (and related rules and forms), revise certain rules on incorporation by reference, and require all of the information on the cover pages of some Exchange Act forms to be tagged in Inline XBRL format.

• Should we make any other conforming changes to Form N-2? For example, while registered CEFs are required to discuss the material factors and conclusions that formed the basis for the board's approval of any investment advisory contract in its shareholder reports,<sup>328</sup> BDCs are not required to provide this disclosure.<sup>329</sup> Should we create such a requirement for BDCs? Why or why not? If yes, where and when should BDCs provide the disclosure—in any Exchange Act report filed within a certain period after board approval (e.g., 90 days), or only in certain reports (e.g., Form 10-K)? Should the disclosure requirement be set forth in Form N-2, or in the form requirements for any relevant Exchange Act reports (i.e., Forms 10-Q or 10-K), or elsewhere?

#### K. Compliance Date

We propose to provide a transition period after the publication of a final rule in the **Federal Register** to give affected funds sufficient time to comply with four of the proposed new requirements, as follows:

• **Form 8-K.** All affected funds that would be eligible to file a short-form registration statement would be required to comply with the full scope of Form 8-K as proposed,<sup>330</sup> including the new Form 8-K items for affected funds, by the earlier of: (1) One year after the publication of a final rule in the **Federal Register**, or (2) the date a fund first files a short-form registration statement under General Instruction A.2 of Form N-2. All other affected funds would be required to comply 18 months after the date of the publication of a final rule in the **Federal Register**.

• **MDFP.** Any annual report that a registered CEF files one year or more after the publication of a final rule in the **Federal Register** would be required to include the proposed MDFP disclosures.<sup>331</sup>

• **Structured Data Requirements.** All affected funds subject to the financial statement or prospectus structured data reporting requirements that would be eligible to file a short-form registration statement would be required to comply with those provisions no later than 18 months after the date of publication of

a final rule in the **Federal Register**. All other affected funds subject to those requirements would be required to comply 24 months after publication of a final rule in the **Federal Register**. All filers on Form 24F-2 would be required to comply with the proposed structured data format for this form<sup>332</sup> no later than 18 months after the publication of a final rule in the **Federal Register**.

• **Rule 24f-2.** The proposed amendments to rules 23c-3 and 24f-2<sup>333</sup> would become effective one year after the publication of a final rule in the **Federal Register**.

We request comment on the proposed compliance dates, and specifically on the following items:

• Are the proposed compliance dates appropriate? If not, why not? Is a longer or shorter period necessary to allow registrants to comply with one or more of these particular amendments? If so, what would be a recommended compliance date?

• Do any other proposed amendments warrant an extended compliance period? If so, which ones, why, and what would be an appropriate compliance date? For example, should affected funds be given a compliance period within which to transition from filing forms of prospectuses that vary from the registration statement pursuant to rule 497 to filing such forms pursuant to rule 424? Are there any complexities about this change in the filing process that would justify providing a compliance period? If so, what are those complexities, and how long would affected funds need to adjust to this change?

• Should we provide affected funds with a different compliance date, or a transition period, before they are required to comply with the full scope of the proposed new Form 8-K requirements? If so, how long should the transition period be, and how should any transition period be structured? For example, should all affected funds be permitted to rely on an extended compliance date or any transition period with respect to filing the new proposed reportable events, or should such accommodations be available only to registered CEFs (because, in contrast to BDCs, they generally have not previously been required to report on Form 8-K)?

### III. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules and forms, specific issues discussed in this release,

and other matters that may have an effect on the proposed rules and forms. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

### IV. Economic Analysis

We are proposing amendments to our rules designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act and tailor the disclosure and regulatory framework for affected funds in light of the proposed amendments to the offering rules applicable to them. Currently, affected funds face regulatory impediments to capital formation as they are not able to use the flexible and less costly offering process that operating companies use when conducting registered securities offerings. This may hinder affected funds' ability to raise capital, take advantage of favorable market conditions as operating companies do, and enjoy lower cost of capital and lower offering costs. Additionally, because of existing rules, affected funds are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus). The proposed rules would provide incremental flexibility to funds in their communications, which may increase the flow of information to investors. As discussed in detail above, the proposed rules would affect numerous distinct aspects of how our securities offering and communications rules apply to affected funds. The proposed rules would:

• Streamline the registration process to allow eligible affected funds to use a short-form registration statement to sell securities "off the shelf" more quickly and efficiently in response to market opportunities;<sup>334</sup>

• Allow affected funds to qualify as WKSIs under rule 405 under the Securities Act;<sup>335</sup>

• Allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies;<sup>336</sup>

• Allow affected funds to use communications rules currently available to operating companies, such

<sup>328</sup> See Instructions 6.e and 6.f of Item 24 of Form N-2; see also Item 27(d)(6)(i) of Form N-1A (parallel provision for open-end funds).

<sup>329</sup> The relevant disclosure requirement is contained in a sub-part of Instruction 6 of Item 24 of Form N-2, which specifically concerns annual and semi-annual reports required by section 30(e) of the Investment Company Act and rule 30e-1 thereunder. Because BDCs do not file these reports, they are not subject to this instruction.

<sup>330</sup> See *supra* Part II.H.3.

<sup>331</sup> See *supra* Part II.H.2.b.

<sup>332</sup> See *supra* Part II.H.1.d.

<sup>333</sup> See *supra* Part II.G.

<sup>334</sup> See *supra* Part II.B.

<sup>335</sup> See *supra* Part II.C.

<sup>336</sup> See *supra* Part II.D.

as the use of certain factual business information, forward-looking information, a free writing prospectus, and broker-dealer research reports;<sup>337</sup> and

- Modify certain aspects of affected funds' disclosure and regulatory framework in light of the proposed amendments to the offering rules applicable to them.<sup>338</sup> These proposed amendments include structured data requirements to make it easier for investors and others to analyze fund data; new annual report disclosure requirements to provide key information in these reports; a new requirement for registered CEFs to file reports on Form 8-K in parity with operating companies and BDCs, including new Form 8-K items tailored to registered CEFs and BDCs; and a proposal to require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.

#### A. Introduction and Baseline

We are sensitive to the economic effects that may result from the rule proposal, including the benefits, costs, and the effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, section 23(a)(2) of the Exchange Act requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not

necessary or appropriate in furtherance of the Exchange Act.

We have considered the potential costs and benefits that would result from the proposed rules, as well as the potential effects on efficiency, competition, and capital formation. Many of the potential economic effects of the proposed rules would stem from the statutory mandates, while others would stem from the discretion we are exercising. We discuss the potential economic effects of the proposed amendments to implement the statutory mandates in Parts IV.B and IV.C. We considered certain alternatives to our proposed approach to implementing the statutory mandate, as discussed in Part IV.D. We are also proposing certain other amendments to tailor affected funds' disclosure and regulatory framework. We discuss the potential economic effects of these discretionary amendments, as well as reasonable alternatives to these provisions, in Part IV.E. We note that, where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate.

The baseline we use to analyze the potential effects of the proposed rules is the current set of legal requirements and market practices. The proposed rules likely would have a significant impact on the security offering requirements and disclosure practices of affected funds. The overall magnitude of the benefits and the costs associated with the proposed rules will depend on many factors, including the number of affected funds that rely on the proposed rules. We recognize that some affected funds would not satisfy the conditions in certain of the proposed amendments (e.g., those limited to WKSIs or funds that file a short-form registration statement on Form N-2), and other

affected funds may satisfy the conditions but choose not to rely on the proposed rules. The discussion below describes our understanding of the markets and issuers that would be affected by the proposed rules.

#### 1. Number of Affected Funds

The proposed rules would affect BDCs and registered CEFs. As of September 30, 2018, there were 807 affected funds, including 103 BDCs and 704 registered CEFs. To estimate the number of BDCs, we use data from Form 10-K and 10-Q filings as of September 30, 2018, the latest data available.<sup>339</sup> We identify 49 listed BDCs and 54 unlisted BDCs. The average net assets of the listed BDCs is approximately \$729 million, and the average of their total assets is \$1.3 billion. Based on trading data as of June 30, 2018, 44 of the listed BDCs have public float greater than \$75 million (*i.e.*, one of the transaction requirement thresholds for primary offerings under the short-form registration instruction) and 14 of those BDCs have public float greater than \$700 million (*i.e.*, the WKSI public float threshold).<sup>340</sup>

We use data from Morningstar and SEC filings to estimate the number of registered CEFs.<sup>341</sup> We identify 516 registered CEFs that were listed on an exchange as of September 30, 2018, including 1 interval fund. There were 188 unlisted registered CEFs as of September 30, 2018, including 56 interval funds. The average net assets of the listed registered CEFs is approximately \$539 million, while the average net assets of the unlisted registered CEFs is approximately \$461 million.<sup>342</sup> Based on trading data as of June 30, 2018, 457 of the listed registered CEFs have public float greater than \$75 million, and 83 of those funds have public float greater than \$700 million.<sup>343</sup> Information about the types of offerings conducted by different categories of affected funds for the period of January 1, 2014–December 31, 2018 is reflected in the below table.<sup>344</sup>

<sup>337</sup> See *supra* Part II.E.

<sup>338</sup> See *supra* Parts II.F–II.H.

<sup>339</sup> The estimated number of BDCs includes BDCs that have not registered a securities offering on Form N-2. Certain of our proposed amendments, such as the proposed requirement to tag certain Form N-2 prospectus disclosure items in Inline XBRL, would only apply to affected funds that have filed a registration statement on Form N-2. As a result, our quantitative estimates of the costs and paperwork burdens of these proposed amendments with respect to BDCs may be over-estimates in certain respects.

<sup>340</sup> The most recent available data (as of June 30, 2018) on prices and shares outstanding, which are used to calculate the public float, is taken from the

Center for Research of Securities Prices ("CRSP") database. CRSP data on shares outstanding includes all publicly held shares.

<sup>341</sup> The estimated number of registered CEFs includes registered CEFs that have not registered a securities offering under the Securities Act. Certain of our proposed amendments, such as the proposed requirement that registered CEFs report on Form 8-K, generally would not apply to these registered CEFs. See, e.g., *supra* footnote 243. Thus, our quantitative estimates of the costs and paperwork burdens of certain of the proposed amendments with respect to registered CEFs may be over-estimates in certain respects.

<sup>342</sup> The average of net assets of registered interval funds is \$448 million.

<sup>343</sup> This includes the listed interval fund, which had public float of approximately \$76 million as of June 30, 2018. Data on prices and shares outstanding, which are used to calculate the public float, is taken from CRSP.

<sup>344</sup> Data on registered offerings (initial public offerings, equity offerings by seasoned issuers, convertible debt offerings, and public debt offerings) for BDCs and listed registered CEFs are taken from Securities Data Corporation's New Issues database (Thomson Financial). Data on Regulation D offerings was collected from all Form D filings (new filings and amendments) on EDGAR. Data on registered offerings for unlisted registered CEFs was collected from Form N-2 and Form N-CSR filings on EDGAR.

Types of offerings	Offering statistics	Listed BDCs	Unlisted BDCs	Listed registered CEFs	Unlisted registered CEFs
Registered offerings ..	Number of offerings .. Total amount raised .. Average (median) offering amount.	114 ..... \$11.7 bil ..... \$102.8 mil (\$65.5 mil)	24 ..... \$1.7 bil ..... \$7.8 mil (\$7.2 mil) .....	31 ..... \$5.9 bil ..... \$190.5 mil (\$103.1 mil).	144. \$21.4 bil. \$177.3 mil (\$31.0 mil).
Regulation D offerings	Number of offerings .. Total amount raised .. Average (median) offering amount.	13 ..... \$720.8 mil ..... \$55.4 mil (\$32.7 mil)	72 ..... \$20.5 bil ..... \$284.3 mil (\$76.3 mil)	..... ..... .....	167. \$6.4 bil. \$38.3 mil (\$6.5 mil).

## 2. Current Securities Offering Requirements for Affected Funds

The securities offering process for affected funds at present differs from that for operating companies. Affected funds register their securities offerings on Form N-2, while operating companies use other forms (e.g., Form S-1 or Form S-3). As discussed above, registered investment companies and BDCs are excluded from certain offering and communication rules available to operating companies.

Affected funds are expressly excluded from the WKSI definition. As a result, even if they would otherwise meet the WKSI definition, they are unable to, for example, file an automatic shelf registration statement or communicate about an offering before filing a registration statement.

Affected funds currently can make shelf offerings under rule 415(a)(1)(x) if they meet the eligibility criteria for Form S-3, even though affected funds register their securities offerings on Form N-2. Affected funds, however, currently face certain challenges in using the shelf registration system. These challenges are generally due to the fact that, unlike operating companies, affected funds cannot: Forward incorporate information from subsequently-filed Exchange Act reports into their registration statements, rely on Securities Act rule 430B to omit certain information from the “base” prospectus, or use the process that operating companies use to file prospectus supplements.<sup>345</sup> For example, when an affected fund sells or “takes down” securities from a shelf registration statement, like an operating company, its registration statement must include all required information, including any annual update of financial information that section 10(a)(3) of the Securities Act requires. However, unlike an operating company, an affected fund must provide any section 10(a)(3) update to its registration statement by filing a post-effective amendment, with associated expenses and potential delays related to the

fund’s preparation of the amendment and our staff’s review and comment process. In contrast, an operating company filing on Form S-3 would generally make the section 10(a)(3) update by timely filing its annual report on Form 10-K containing the issuer’s audited financial statements for the most recently completed fiscal year. The financial statements would be forward incorporated by reference into the operating company’s registration statement and, thus, the company would avoid the need to file a post-effective amendment to comply with section 10(a)(3).

Currently, affected funds’ communications generally are subject to rule 482 under the Securities Act.<sup>346</sup> Affected funds can use these communications only after a fund has filed a registration statement.<sup>347</sup> These communications are deemed to be prospectuses that are subject to prospectus liability under section 12 of the Securities Act. Rule 138, one of our rules governing research reports published by broker-dealers, does not currently specifically exclude BDCs and registered CEFs from research coverage. The rule’s conditions are designed for operating companies, however, and therefore can effectively preclude broker-dealers from relying on the rule to publish research reports on affected funds. Broker-dealers can, however,

publish research reports on affected funds under rule 139b or rule 482.<sup>348</sup>

As a general matter, affected funds are limited in their ability to incorporate information into their registration statements by reference and are required to deliver a final prospectus to investors. Form N-2 also requires affected funds to provide to new purchasers a copy of all previously-filed materials that the fund incorporated by reference into the prospectus and/or SAI. We understand that this requirement creates particular challenges for BDCs, which generally do not take advantage of the backward incorporation permitted by Form N-2. Instead, BDCs generally include the required financial and related information in the prospectus, which can double or even triple the length of a BDC’s prospectus. For example, the median page length of prospectuses filed by listed BDCs is approximately 234 pages.<sup>349</sup>

## 3. Current Disclosure Obligations of Affected Funds

Affected funds differ in their periodic and current reporting obligations. Like operating companies, BDCs file annual reports with audited financials on Form 10-K, quarterly reports with unaudited financials on Form 10-Q, and current reports on Form 8-K. In 2018, all 49 of the listed BDCs filed form 8-K reports, while only 38 of the 54 unlisted BDCs filed such reports. Registered CEFs file annual reports to shareholders with audited financials and semi-annual reports to shareholders with unaudited financials on Form N-CSR. Listed registered CEFs are also subject to exchange rules that require listed issuers to provide the market current information in response to certain events (e.g., dividends announcements through a press release or report on Form 8-K). In 2018, there were 75 registered CEFs that furnished or filed Form 8-K reports either voluntarily or as a result of current disclosure requirements under exchange rules. Of

<sup>346</sup> Affected funds also may engage in communications that are not deemed a prospectus under section 2(a)(10) of the Securities Act (e.g., communications that are accompanied or preceded by a statutory prospectus). See 15 U.S.C. 77b(a)(10).

<sup>347</sup> We recently issued a proposal that would allow issuers, including affected funds, to engage in oral or written communications with potential investors that are, or are reasonably believed to be, qualified institutional buyers or institutional accredited investors, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering. If this rule is adopted, affected funds would be permitted to engage in certain communications with qualified institutional buyers and institutional accredited investors outside the context of rule 482 or the communications rules we are proposing to extend to affected funds in this release. See Solicitations of Interest Prior to a Registered Public Offering, Securities Act Release No. 10607 (Feb. 19, 2019) [84 FR 6713 (Feb. 28, 2019)].

<sup>348</sup> See *supra* Part II.E.2.

<sup>349</sup> This estimate is based on the most recent Form N-2 filings of the 49 listed BDCs.

<sup>345</sup> See *supra* Part II.B.1.

these, 65 were listed registered CEFs and 10 were unlisted registered CEFs.

### *B. Potential Benefits Resulting From the Proposed Implementation of the Statutory Mandates*

As discussed, the proposed amendments to implement the statutory mandates are designed to provide securities offering parity between affected funds and operating companies and streamline the registration process for BDCs and registered CEFs, consistent with the BDC Act and the Registered CEF Act. We believe that the proposed rules would achieve this goal and consequently result in significant benefits in a number of areas, including by improving access to the public capital markets and possibly lowering the cost of capital by, among other things, modifying our rules related to affected funds' ability to qualify as WKSIs, to use the full shelf registration process, and to engage in certain communications during a registered offering.<sup>350</sup> Additionally, as discussed below, we believe that the proposed rules would provide benefits to investors as well, including by increasing the flow of valuable information that could be available to investors to inform their investment decisions. Finally, we believe that the proposed rules would provide cost-saving options to affected fund issuers and underwriters.

#### **1. Improved Access to Capital and Lower Cost of Capital**

We anticipate that the proposed rules would facilitate capital formation and possibly lower the cost of capital by improving access to the public capital markets for affected funds. The rules are designed to reduce regulatory impediments to capital formation and provide more flexibility to these funds to conduct registered securities offerings. The amount of flexibility accorded by the proposed rules will depend on the characteristics of the affected funds, consistent with our rules' treatment of similarly-situated operating companies. For example, and as explained below, certain affected funds like large listed BDCs and large listed registered CEFs are expected to benefit more from the proposed rules than unlisted BDCs and unlisted registered CEFs, including unlisted interval funds. The proposed rules would provide the most flexibility under the communications rules and the automatic shelf registration system to

eligible WKSIs. Other affected funds, such as seasoned affected funds, also would benefit, albeit to a lesser degree, from the other revisions to the offering process and our communications rules.

The largest increase in capital formation and reduction in cost of capital that the proposed rules could generate would come from allowing affected funds to obtain WKSIs status. Affected funds that qualify as WKSIs would enjoy additional flexibility compared to affected funds that are non-WKSIs.<sup>351</sup> There are 97 affected funds (14 listed BDCs and 83 listed registered CEFs) that meet the \$700 million public float criterion as of June 30, 2018.<sup>352</sup> A WKSI's registration statement and any subsequent amendments are automatically effective upon filing. This flexibility would allow affected funds that qualify as WKSIs to promptly tap favorable windows of opportunity in the public market, to structure terms of securities on a real-time basis to accommodate investor demand, and to determine or change the plan of distribution in response to changing market conditions. For example, affected funds, which typically trade at a discount to their NAV,<sup>353</sup> that are WKSIs would be able to act more quickly to raise capital when their shares are trading at a premium,<sup>354</sup> thus increasing the amount of capital raised and enhancing capital formation.

Additionally, WKSIs are not required to pay any registration fees at the time of the filing of the registration statement. They are only required to pay the SEC filing fee at the time securities are taken down and sold off the shelf. This would provide additional flexibility to qualifying affected funds in that they need only incur such filing fees if and when they decide to proceed with an offering. The proposed rules may also lower the cost of capital because they would provide significant flexibility to affected funds that are WKSIs and their underwriters in marketing securities. The proposed communications rules would allow these funds to communicate at any time regarding an offering.

<sup>351</sup> See *supra* Part II.C.

<sup>352</sup> See *supra* Part IV.A.1.

<sup>353</sup> See, e.g., Jonathan B. Berk and Richard Stanton, *Managerial Ability, Compensation, and the Closed-End Fund Discount*, *Journal of Finance*, Vol. 62, 529–556 (2007); Jeffrey Pontiff, *Costly Arbitrage: Evidence from Closed-End Funds*, *Quarterly Journal of Economics*, Vol. 111, 1135–1151 (1996); Charles M.C. Lee, Andrei Shleifer, and Richard H. Thaler, *Investor Sentiment and the Closed-End Fund Puzzle*, *Journal of Finance*, Vol. 46, 76–110 (1991).

<sup>354</sup> See *supra* footnote 27 (discussing restrictions on affected funds' ability to sell their shares at a price below NAV).

Given the important benefits that the WKSI status creates, and the fact that currently only few affected funds would qualify as WKSIs, it is possible that advisers to some affected funds may try, through various means, including raising additional capital and mergers and acquisitions, to increase their funds' public float to the WKSI threshold. Thus, possible effects of the rule may include increased fund size and consolidation of affected funds. Such developments may increase efficiency by allowing the larger resulting funds to benefit from improved access and lower cost of capital. We also recognize that consolidation may be driven by other factors as well, in combination with the effects of the rule, and typically would be subject to certain approvals by a fund's board of directors or shareholders.<sup>355</sup> Potential consolidation and increases in fund size could also reduce costs to investors by, for example, allowing an affected fund to realize greater efficiencies and reduce its total operating expenses over time. However, consolidation also could negatively affect the number of investment opportunities available to investors if it leads to a reduction of the number of strategies funds employ. While barriers to entry in the affected fund industry are relatively low, and it is possible that new funds will enter the market thereby increasing competition and investment opportunities, potential consolidation of affected funds could make it more difficult for new or smaller funds to compete since funds with larger amounts of assets may have better access to certain investment opportunities or may be able to offer lower costs to investors. At present, we are not able to estimate the effects of these competitive dynamics.

Other provisions of the proposed rules could also enhance capital formation and lower the cost of offerings for affected funds that qualify as seasoned funds and file a short-form registration statement on Form N–2.<sup>356</sup> For example, the proposed rules would generally allow these funds to more efficiently use the shelf registration process if, like operating companies, they meet the eligibility requirements of Form S–3.<sup>357</sup> As of June 30, 2018, there were 501 affected funds that met the \$75 million dollar public float criterion for primary offerings under Form S–3 (which criterion would be incorporated

<sup>355</sup> See, e.g., rule 17a–8 under the Investment Company Act [17 CFR 270.17a–8].

<sup>356</sup> See *supra* Part II.B.

<sup>357</sup> The short-form registration instruction refers to the eligibility criteria in Form S–3, with additional references to reporting requirements under the Investment Company Act.

<sup>350</sup> See also *infra* Part IV.E (discussing benefits associated with our discretionary rule amendments).

into the short-form registration instruction of Form N-2).<sup>358</sup> Affected funds that qualify would bear fewer costs associated with updating the information in their registration statements because information in the fund's Exchange Act reports would be incorporated by reference into the fund's registration statement. For example, we estimate that eligible affected funds would file approximately 112 fewer post-effective amendments annually as a result of the proposal, which would result in an annual aggregate cost reduction of approximately \$7,943,376 for these funds.<sup>359</sup> Additionally, we understand that currently BDCs often file prospectus supplements close-in-time to filing their current and periodic Exchange Act reports to make sure the BDC's prospectus disclosure provides the same information as that disclosed in its Exchange Act reports. Under the proposed rules, eligible BDCs would no longer file these prospectus supplements since their Exchange Act reports would be incorporated by reference into their registration statements. As a result, an eligible BDC may, on average, file approximately 14 fewer prospectus supplements on an annual basis under the proposed rules.<sup>360</sup> We anticipate that eligible registered CEFs also would be able to make fewer prospectus supplement filings under the proposed rules, although they likely would not experience as large of a reduction in filings since, among other things, they file periodic reports on a semi-annual basis (rather than quarterly) and generally are not required to report on Form 8-K at present. While we believe that affected funds would likely file fewer prospectus supplements under the proposed amendments, we are unable to estimate any reduction in the number of prospectus supplements that affected funds would file under the proposal, and any associated cost

savings for affected funds, due to certain counterbalancing factors. For example, if the proposal causes affected funds to increase their capital-raising activities, they may need to update their prospectuses more often and may file more prospectus supplements as a result. However, if affected funds begin to use their Exchange Act reports to update their prospectuses, as permitted under the proposed amendments and as we believe they might,<sup>361</sup> they may file fewer prospectus supplements. On average, we believe that affected funds would likely file fewer prospectus supplements under the proposed amendments since they would be able to update their prospectus more efficiently by forward incorporating their Exchange Act reports, although an affected fund that greatly increases its capital-raising activities may not experience the same reduction in filing burdens.

In general, we believe affected funds that qualify for the short-form registration instruction would experience cost savings associated with making fewer filings and would be able to use a more efficient process to update their prospectus disclosure. This would decrease the costs of eligible funds' registered offerings and would also allow them to act more quickly to take advantage of favorable market conditions (e.g., when trading at a premium). Certain seasoned funds registering securities in shelf offerings also would be able to omit certain information from their base prospectuses and use the same process as operating companies to provide omitted information by filing a prospectus supplement, which would generally make the shelf registration process less costly for these funds as compared to the baseline.

The proposed rule also may provide incremental cost savings to affected funds that are eligible to file a short-form registration statement in certain other respects. For example, the proposed rule would reduce the costs of these funds seeking shareholder approval for proposals to authorize, issue, modify, or exchange securities by allowing them to incorporate by reference certain materials rather than delivering these materials to security holders with the proxy statement.<sup>362</sup> We do not anticipate that these cost savings would be substantial, however, as we understand that affected funds do not often make these types of proposals to security holders. Affected funds that are eligible to file a short-form registration

statement also could experience modest cost savings from the proposed amendment to rule 418 since they would no longer be required by that rule to furnish certain information to the Commission or its staff promptly on request.<sup>363</sup>

The proposed rules would generate other benefits for affected funds generally, regardless of whether they are WKSIs or seasoned funds. For example, the proposal to require affected funds to follow the same process that operating companies follow to file prospectuses in rule 424 would require that affected funds file prospectus supplements only if substantive changes from or additions to a previously filed prospectus are made, whereas currently they are required to file every prospectus that varies from any previously filed prospectus under rule 497.<sup>364</sup> Rule 424 also is designed to work together with rule 415(a)(1)(x), and provides additional time for an issuer to file a prospectus. This proposed change could modestly reduce filing burdens and should facilitate eligible funds using the shelf registration process efficiently and in parity with operating companies. Also, the proposed rules would allow an affected fund to satisfy its obligation to deliver a final prospectus by filing it with the Commission, thus decreasing the cost of the offering.<sup>365</sup> For example, the proposed rules would permit affected funds to save on printing and mailing costs for delivering the final prospectus in paper.<sup>366</sup>

The lower costs of registered offerings resulting from the proposed rules would be beneficial to investors in affected funds because funds bear offering expenses. Lowering offering expenses may, all else equal, reduce the size of the discount or increase the size of the premium at which shares of the affected funds trade. In addition, the proposed rules could reduce the cost to underwriters of participating in registered offerings of affected funds, and these potential cost savings could be passed on to the affected funds. Based on the sheer volume and number

<sup>358</sup> See *supra* Part IV.A.1.

<sup>359</sup> For purposes of the PRA, we estimate that this would decrease the aggregate annual burden of Form N-2 by 11,984 hours and would result in a reduction in the cost burden for Form N-2 by \$3,149,776. See *infra* footnote 448. We monetize the internal burden of preparing post-effective amendments by multiplying the burden hours by an estimated wage rate of \$400 per hour (11,984 × \$400 = \$4,793,600). The estimated wage figure is based on analysis in previous rulemakings. The total annual cost is calculated by adding the monetized internal burden (\$4,793,600) to the cost of outside professionals (\$3,149,776).

<sup>360</sup> This analysis assumes that a BDC would file a prospectus supplement for each Form 10-Q filing (3 filings per year), Form 10-K filing (1 filing per year), and Form 8-K filing (estimated to be 10 filings per year), for a total of 14 periodic and current reports per year. See *infra* footnote 415 and associated text.

<sup>361</sup> See *supra* Parts II.B.2.c and II.H.2.a.

<sup>362</sup> See *supra* Part II.F.2.

<sup>363</sup> See *supra* Part II.F.1.

<sup>364</sup> See *supra* Part II.B.2.b.

<sup>365</sup> See *supra* Part II.D.

<sup>366</sup> Because a fund is not required to report the extent to which it relies on Commission guidance, we lack information to estimate the percentage of funds that solely or predominantly rely on electronic delivery under existing Commission guidance. See, e.g., Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)]. Affected funds that rely to a greater extent on electronic delivery of final prospectuses under existing Commission guidance may realize smaller net cost savings under the proposed rules.



of transactions,<sup>367</sup> underwriters may have more expertise and established procedures for the registered offerings of operating companies, which are subject to the rules we propose to extend to affected funds. In contrast, underwriters probably have less, or more concentrated, expertise regarding the requirements for offerings by affected funds. Standardization in the registered offering space, by making the offerings of affected funds more similar to those of operating companies, could make it easier for underwriters to execute such offerings and may decrease their compliance costs. If underwriters pass some of the cost savings on to affected funds and their investors, this could result in cheaper registered offerings for affected funds, thus encouraging them to raise more capital, which would lead to enhanced capital formation. Lastly, standardization may encourage a broader set of underwriters to participate in this market, potentially decreasing costs for affected funds and investors in these funds.

The proposed rules could level the securities offering playing field between affected funds and operating companies and streamline the registration process for affected funds, consequently making them potentially more competitive in the market for capital raising. The proposed rules may also make certain affected funds more competitive compared to affected funds that either cannot or choose not to rely on these rules. Thus, the proposed rules would likely enhance competition in the public capital markets. The increased competition for capital in turn could lead to potentially better allocation of capital in the market. The proposed rules may also benefit companies in which affected funds invest. Small and mid-size companies, because of their size, type of assets, risk profile, and the general lack of information about their activities and financial condition, typically find it more difficult to raise funds from traditional sources of capital such as bank loans and registered offerings.<sup>368</sup> This difficulty in sourcing

more traditional financing constrains their ability to invest in profitable projects and grow. To the extent that the proposed rules improve capital raising opportunities for BDCs and registered CEFs that invest in these companies, this may result in investments in a greater number of small to mid-size U.S. companies, thus alleviating financial constraints of such companies and contributing to economic growth generally.<sup>369</sup>

## 2. Facilitated Communication With Investors

The proposed rules would provide incremental flexibility to funds in their communications, which may increase the flow of information to investors.<sup>370</sup> Currently, affected funds are unable to communicate about an offering before a registration statement is filed, and their post-filing communications are subject to prospectus liability under section 12 of the Securities Act (or must be accompanied or preceded by the statutory prospectus).

This standardization in the communications processes of affected funds, by making them similar to those of operating companies, would make it easier for underwriters to execute offerings by affected funds and thus may decrease their compliance costs, which in turn may lead to lower offering costs and potentially enhance capital formation. Additionally, under the proposal, affected funds that would qualify as WKSIs would be permitted to engage in the widest range of communications, including free writing prospectuses about an offering before a registration statement is filed. More generally, affected funds would be able to engage in certain other pre-filing communications, use free writing prospectuses after a registration statement is filed, and use certain communications that are not subject to prospectus liability. The proposed changes in the communications rules for affected funds may increase the amount of valuable information that could be provided to investors before they make investment decisions, particularly with respect to WKSIs. We believe that more information could be provided on a timelier basis because the rules would

eliminate regulatory barriers to the dissemination of that information, and the markets may provide incentives for issuers, underwriters, and broker-dealers to produce additional information. We also believe that the increased flexibility of affected funds in their communications with investors under the free writing prospectus rules would maintain appropriate investor protection, consistent with the protections that apply to affected funds' communications under rule 482. For example, the proposed rules that allow affected funds to use free writing prospectuses are designed to assure that written issuer-provided or issuer-used information is publicly available. Additionally, the free writing prospectus will be a section 10(b) prospectus under the Securities Act and, as such, will be subject to liability under section 12(a)(2) as well as the anti-fraud provisions of the federal securities laws.

Increased information flow can help promote efficient capital markets because the market may be able to value securities more accurately. For example, the proposed rules would permit broker-dealers to disseminate research about an affected fund if certain conditions are met. While broker-dealers currently may disseminate such research under rule 482, the proposed amendments to rule 138 would likely reduce certain costs to broker-dealers associated with rule 482 (e.g., filing costs and concerns associated with prospectus liability). This could allow more valuable information about affected funds to reach potential investors. Another benefit of increasing the information flow is that investors may become better informed in making portfolio allocation decisions in accordance with their particular risk-return profiles. In addition, the proposed rules may benefit broker-dealers who provide research reports on affected funds by reducing their potential liability exposure associated with such reports, relative to the baseline, which may encourage them to provide additional research and enhance information flow.

## C. Potential Costs Resulting From the Proposed Implementation of the Statutory Mandates

### 1. Compliance Costs

We expect the rules we are proposing to implement the statutory mandate could increase compliance costs for affected funds in certain respects.<sup>371</sup> We

<sup>367</sup> For example, in 2017 non-fund issuers raised approximately \$1.3 trillion in 1,846 registered debt offerings and \$184 billion in 976 registered equity offerings. See Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2017, Division of Economic and Risk Analysis White Paper (Aug. 1, 2018), available at [https://www.sec.gov/dera/staff-papers/white-papers/dera\\_white\\_paper\\_regulation\\_d\\_082018](https://www.sec.gov/dera/staff-papers/white-papers/dera_white_paper_regulation_d_082018).

<sup>368</sup> See, e.g., Alan Berger and Gregory Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle*, Journal of Banking and Finance, Vol. 22, 613–673 (1998); Meghana Ayyagari, Asli Demirgüç-Kunt, and Vojislav Maksimovic, *How Important are Financing Constraints? The Role of Finance in the Business Environment*, World Bank

Mimeo (2005); Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015) [80 FR 71388 (Nov. 16, 2015)].

<sup>369</sup> See, e.g., Torsten Beck, Asli Demirgüç-Kunt, and Ross Levine, *SMEs, Growth, and Poverty: Cross-Country Evidence*, Journal of Economic Growth, Vol. 10, 197–227 (2005); Ryan Decker, John Haltiwanger, Ron Jarmin, and Javier Miranda, *The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism*, Journal of Economic Perspectives, July, 3–24 (2014).

<sup>370</sup> See *supra* Part II.E.

<sup>371</sup> See also *infra* Part IV.E (discussing compliance and other costs associated with the proposed discretionary amendments).



are also cognizant of the fact that such an increase could be passed on to funds' investors. A potential cost of the proposed rules is that affected funds could incur increased filing or recordkeeping costs associated with issuer free writing prospectuses,<sup>372</sup> although affected funds currently face many of the same filing and recordkeeping costs under rule 482. For example, the ability of affected funds that qualify as WKSIs to use free writing prospectuses may increase the level of these funds' current communications (including communications prior to filing a registration statement that are presently prohibited), thus increasing the funds' filing and recordkeeping costs. We estimate that affected funds that are WKSIs would have additional annual filing and recordkeeping costs of \$200 per affected fund for free writing prospectuses used before the fund files a registration statement.<sup>373</sup> To the extent affected funds use free writing prospectuses for communications that currently occur under rule 482, the costs associated with free writing prospectuses could increase, and the costs associated with rule 482 advertisements could decrease. We are unable to predict, however, whether affected funds would be more likely to use free writing prospectuses than rule 482 communications or to engage in more communications with investors in practice as a result of the proposed rules.

Affected funds could also incur costs associated with adjusting their internal procedures for filing prospectus supplements.<sup>374</sup> Such costs could stem from the need to augment funds' information technology systems or train funds' employees, although, as recognized above, affected funds likely would be able to file fewer prospectus supplements under the proposal.

Parties that would be required to provide notices under rule 173,<sup>375</sup>

including underwriters and dealers in certain circumstances, may incur additional costs due to the requirement to notify affected fund investors that they have purchased shares in a registered offering. In addition, these same parties would incur costs to establish procedures for receiving and complying with requests for final prospectuses. We believe that providing the notice to investors would not impose a significant incremental cost because the notice can consist of a pre-printed message that is automatically delivered with or as part of the confirmation required by Exchange Act rule 10b-10.<sup>376</sup> Accordingly, we estimate that the cost of complying with rule 173 would be approximately \$0.05 per notice.<sup>377</sup> We estimate the annual cost of providing the notification would be approximately \$1,757,081.<sup>378</sup> For the parties that are required to provide such notices, these additional costs of complying with rule 173 would be mitigated to a certain degree by the proposed elimination of the requirement to supply a final prospectus to each investor.

## 2. Other Costs

Under the proposed rules, affected funds that qualify as WKSIs would be able to file registration statements and post-effective amendments that become automatically effective. To the extent that investors previously benefited from the Commission staff's review of these filings before they become effective, allowing filings of affected funds that are WKSIs to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. Allowing affected funds that file short-form registration statements on Form N-2 to forward incorporate by reference could have a similar potential impact on investors. However, issuers would still face liability under the federal securities laws for registration statement disclosures (e.g., sections 12 and 17 of the Securities Act and section 10(b) and rule 10b-5 under the Exchange Act), which may ameliorate the potential

costs associated with reduced staff review.<sup>379</sup>

More generally, allowing forward incorporation by reference under the short-form registration instruction could increase the analytical burden and search costs for potential investors. Currently, affected funds provide required information in the prospectus that is delivered to investors, and forward incorporation by reference is not allowed. Under the proposal, instead of having all the information available in one location, investors may need to separately access on a website or request the incorporated materials. As a result, costs to investors for assembling and assimilating necessary information could increase, with a potentially stronger effect for retail investors (e.g., because they generally may not have the technical capabilities or monetary resources to efficiently search through a multitude of information sources). We do not have data to assess if, and to what extent, this proposed revision would be burdensome to investors.

However, an affected fund making a shelf offering under rule 415(a)(1)(x) is required to file a new registration statement every three years, which provides investors with a periodic update of consolidated information.<sup>380</sup> We are also proposing to require that affected funds provide in their annual reports certain information currently disclosed in their prospectuses to make the information more readily available in one document for investors.<sup>381</sup> Further, Securities Act Forms S-3 and F-3 have long permitted incorporation by reference from the issuer's Exchange Act reports, and investors have not indicated they are unduly burdened when investing in offerings registered on these Forms.<sup>382</sup> Studies have shown, however, that the majority of investors in operating companies are institutional investors, whereas the majority of investors in the securities of affected funds are retail investors, who may face relatively higher costs associated with searching for information distributed across multiple documents.<sup>383</sup> In

<sup>372</sup> See *supra* Part II.E.1; *infra* Part V.B.4 (estimating the annual paperwork burden for free writing prospectuses under rules 163 and 433 for purposes of the PRA).

<sup>373</sup> For purposes of the PRA, we estimate that, on average, affected funds that are eligible to be WKSIs (estimated as 104 funds) would file two free writing prospectuses under the proposed amendments to rule 163 each year. We estimate the total incremental burden would be approximately 0.125 hours and \$150 for the service of outside professionals. See *infra* Part V.B.4. We monetize the internal burden of preparing and filing a free writing prospectus by multiplying the burden hours by an estimated wage rate of \$400 per hour (0.125 × \$400 = \$50). The estimated wage figure is based on analysis in previous rulemakings. The total annual cost is calculated by adding the monetized internal burden (\$50) to the cost of outside professionals (\$150).

<sup>374</sup> See *supra* Part II.B.2.b.

<sup>375</sup> See *supra* Part II.D.

<sup>376</sup> See rule 10b-10 under the Exchange Act [17 CFR 240.10b-10].

<sup>377</sup> The Commission has estimated the cost per rule 173 notice to be \$0.05 for operating companies. See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44795. We assume the same cost will apply to rule 173 notices provided to affected fund investors.

<sup>378</sup> For the purpose of the PRA, we estimate that there would be 43,546 notices per year per affected fund. The annual cost of providing rule 173 notification is calculated as the number of affected funds (807) × the number of notices per year (43,546) × the cost per notice (\$0.05). See *infra* Part V.B.5.

<sup>379</sup> Certain of our discretionary amendments may also ameliorate these costs. See *infra* Part IV.E.3 (discussing the benefits and costs of the proposed requirement to disclose material staff comments) and Part IV.E.2 (discussing the benefits and costs of the proposed structured data requirements).

<sup>380</sup> See *supra* footnote 19.

<sup>381</sup> See *supra* Part II.H.2.a.

<sup>382</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44796.

<sup>383</sup> The average institutional holding is estimated to be approximately 30% for BDCs and 21% for registered CEFs. See CIFRR Adopting Release, *supra* footnote 98, at 64199. The institutional ownership of U.S. public equities was approximately 67% as

addition, the requirement to backward and forward incorporate by reference certain information into a short-form registration statement could increase an affected fund's liability with respect to information that has not previously been incorporated into its registration statement because this information would now be part of the registration statement. This could increase costs for relevant funds, including potential legal costs (e.g., those associated with additional review of materials that would be incorporated by reference into the fund's registration statement or counsel and other costs in connection with potential legal actions). These potential cost increases due to the proposed rules could be passed on to investors of affected funds.

The proposed rules would allow an affected fund to not deliver final prospectuses to investors if the fund files the final prospectus with the Commission. We acknowledge, however, that while this procedure has become commonplace in many aspects of our capital markets, there may be some investors who would prefer to receive the prospectus directly. While an investor could request a copy of the final prospectus under rule 173, there would be burdens on an investor to make such a request (e.g., loss of time while making the request and a delay in receiving the prospectus). Thus, investors without home internet access, depending on their ability and preference to access fund information electronically, might experience a reduction in their ability to access a fund's final prospectus. To the extent that a reduction in this information by such investors decreases how informed they are about affected funds, it could potentially decrease their ability to efficiently allocate capital across affected funds and other investments. However, an investor's purchase commitment and the resulting contract of sale of securities to the investor in the offering generally occur before the final prospectus is required to be delivered under the Securities Act, and this is commonplace in other parts of our capital markets. Moreover, for sales occurring in the secondary market, as a result of our existing rules, investors in securities of reporting issuers generally are not delivered a final prospectus.<sup>384</sup>

of 2010. See Marshall E. Blume and Donald B. Keim, Working Paper, *Institutional Investors and Stock Market Liquidity: Trends and Relationships*, The Wharton School, University of Pennsylvania (Aug. 21, 2012).

<sup>384</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44782.

#### *D. Alternatives to Proposed Approach To Implementing Statutory Mandates*

We considered certain alternative approaches to implementing the directives in the BDC Act and Registered CEF Act to allow affected funds to use the securities offering rules that are available to operating companies. Although the BDC Act identifies certain required amendments to our rules and forms, we could have, for example, made additional modifications to the relevant provisions for affected funds or further revised the current registration and offering framework affected funds use.

For example, as discussed above, we considered modifying the public float standards in the WKSII definition or the short-form registration instruction by changing the required level of public float or providing alternative eligibility criteria, such as net asset value of a certain size for funds whose shares are not traded on an exchange.<sup>385</sup> These alternatives could have allowed more affected funds to qualify as WKSIs or to file short-form registration statements, with the associated benefits (e.g., lower costs of registered offerings) and costs (e.g., potential higher incidence of disclosures and fund practices that may not comply with applicable law due to reduced staff review) discussed above. For example, most interval funds do not list their securities on an exchange and do not have "public float," and these alternatives therefore could have permitted these interval funds, as well as other unlisted affected funds, to qualify as WKSIs or file short-form registration statements. However, modifying the eligibility criteria in the WKSII definition or the short-form registration instruction could give affected funds that do not have the requisite public float under the current WKSII definition or Form S-3 eligibility requirements an advantage over operating companies. Further, we do not believe that affected funds would be likely to have a level of market following at lower levels of public float than operating companies that would justify a lower public float threshold or alternative metric to qualify as a WKSII or to use a short-form registration statement. In addition, certain of the benefits that flow from WKSII status or the ability to use a short-form registration statement may be less relevant to unlisted affected funds that are engaged in continuous offerings.<sup>386</sup>

Under the BDC Act and the Registered CEF Act, we could have extended the

<sup>385</sup> See *supra* Part II.C.

<sup>386</sup> See *supra* paragraph accompanying footnotes 34–37.

proposed rules only to BDCs, listed registered CEFs, and interval funds. Under this approach, unlisted registered CEFs would not have been able to take advantage of certain benefits of the proposed rules that would otherwise be available to unlisted BDCs, such as the cost-savings associated with the final prospectus delivery reforms.<sup>387</sup> This alternative also could have saved unlisted registered CEFs certain compliance costs stemming from the proposed rulemaking, such as the requirement to report on Form 8-K. However, excluding unlisted registered CEFs from the proposed rules could create unnecessary competitive disparities between unlisted registered CEFs and unlisted BDCs and would not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are proposing.

#### *E. Discussion of Discretionary Choices*

We discuss below the discretionary amendments that we are proposing, in light of the proposed changes to implement the BDC Act and Registered CEF Act and the associated benefits and costs of those choices. We have tried to quantify the impact of each of the proposals, but in many cases, reliable, empirical evidence about the effects is not readily available to the Commission. We do, however, request that commenters provide us with any empirical evidence relating to these various choices to the extent that they can.

##### *1. New Registration Fee Payment Method for Interval Funds*

We are proposing a modernized approach to registration fee payment for interval funds that would require them to pay securities registration fees using the same method that mutual funds and ETFs use today. Specifically, the proposal would require interval funds to pay their registration fees on a net basis once a year, rather than having to pay registration fees when the fund files its registration statement.<sup>388</sup> We believe this approach would make the registration fee payment process for interval funds more efficient. For example, it would avoid the possibility that an interval fund would inadvertently sell more shares than it had registered and would not require the interval fund to periodically register new shares.

We believe the proposal could also benefit interval funds by reducing their

<sup>387</sup> As previously recognized, unlisted registered CEFs would not be eligible for certain of the proposed amendments. See *supra* Part II.A.

<sup>388</sup> See *supra* Part II.G.

initial registration fees. In the table below, we have attempted to quantify	the potential initial cost-savings for interval funds under the proposed	modernized approach to registration fee payment over a 3-year period. <sup>389</sup>
	Current average registration fee (paid upon filing) <sup>390</sup>	Average registration fee that would have been paid under the proposal (paid at the end of the fiscal year) <sup>391</sup>
Year 1 .....	\$31,501	\$7,821
Year 2 .....	.....	6,550
Year 3 .....	.....	20,957

Within the current regime, an interval fund would pay on average \$31,501 at the time of filing, and then issue and repurchase securities over time. Under the proposed regime, the fund would pay its registration fees on a net basis once a year. Since the proposed rule would allow interval funds to shift more of the fee payments to the future, it would decrease their cost of offering securities. An interval fund would, however, be required to annually file Form 24F-2.<sup>392</sup> We estimate the annual burden of filing Form 24F-2 for interval funds would be \$134 per fund.<sup>393</sup>

As an alternative, we considered proposing to allow a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f-2. This approach would have extended the benefits of rule 24f-2 to additional affected funds. However, as discussed above, interval funds have structural similarities to mutual funds and ETFs that other affected funds do not. In particular, interval funds routinely repurchase shares at net asset value and are required to periodically offer to repurchase their shares, and therefore are more likely to realize the operational benefits of computing registration fees on a net annual basis than are funds that are not required to periodically offer to repurchase their shares at net asset value.

## 2. Structured Data Requirements

The proposed rules include new structured data reporting requirements for affected funds. Under the proposal, all affected funds would be required to tag in Inline XBRL format certain Form

N-2 prospectus disclosure items. All affected funds also would be required to tag the information on the cover page of Form N-2 using Inline XBRL in accordance with the EDGAR Filer Manual. Finally, BDCs would be required to tag financial statement information using Inline XBRL.

Under the proposal, affected funds would be required to tag the following Form N-2 prospectus disclosure items using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.<sup>394</sup> These items provide important information about an affected fund's key features, costs, and risks and may be particularly useful to investors to inform their investment decisions. With respect to the proposal to require BDCs to tag financial statement information, unlike operating companies and registered investment companies, BDCs currently are not required to report any structured data.<sup>395</sup> This proposed requirement would extend to BDCs a requirement that currently applies to operating companies.

Requiring BDCs to tag financial statement information using Inline XBRL, and all affected funds to tag in Inline XBRL format certain important prospectus disclosure items, would provide important benefits to investors seeking to access information about affected funds, whether directly or through third-party information providers. By providing a standardized, interactive, computer-based framework for reporting, it could further facilitate

more efficient comparisons of important information across affected funds by making it easier to aggregate and analyze information through automated means, which could increase competition for investor capital. The proposed Inline XBRL tagging requirements may also potentially increase the efficiency of capital formation to the extent that making disclosures available in a structured format reduces some of the information barriers facing prospective investors and makes it easier for affected funds to attract investors. Smaller affected funds in particular may benefit more from enhanced exposure to investors. If reporting the disclosures in a structured format increases the availability, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by third-party information providers and data aggregators. Further, requiring affected funds to tag certain prospectus disclosures using Inline XBRL would facilitate monitoring of these funds by staff and market participants more generally, which could, for example, increase investor protection by enhancing staff's ability to monitor for regulatory compliance. This could mitigate potential costs associated with other aspects of the proposal, such as automatic shelf registration statements for WKSIs and short-form registration statements for eligible funds, that could affect investor protection.<sup>396</sup>

The proposed cover page tagging requirement would include new

<sup>389</sup> The estimates are based on data collected for interval funds that were active as of June 30, 2018. We used their Form N-2 filings and Form N-CSR filings to identify current registration fees, proceeds from shares issued, and cost of shares redeemed.

<sup>390</sup> The current average registration fee paid in year 1 is the average of the actual fees reported by the interval funds in the Calculation of Registration Fee table in Form N-2. For purposes of this analysis, we assume that interval funds did not register additional securities in years 2 or 3. If they did, the average registration fees under the current framework would be higher than \$31,501.

<sup>391</sup> For each of the interval funds, the fees in years 1, 2, and 3 are estimated as [(dollar proceeds from shares issued + dollar cost of shares redeemed) / \$1,000,000] × \$121.20. The \$121.20 is the fee rate (per million dollars) that funds pay to register shares for fiscal year 2019. Then we calculate the average fees per year.

<sup>392</sup> As discussed below, interval funds and other funds that file on Form 24F-2 would be required to file the form in a structured XML format under the proposed rules.

<sup>393</sup> For PRA purposes, we estimate an annual burden per respondent of filing Form 24F-2 of two hours. See *infra* Part V.B.7. At an estimated wage rate of \$67 per hour, the annual dollar cost for filing Form 24F-2 is \$132 (2 hours × \$67 per hour). This estimate does not account for burdens associated with filing Form 24F-2 in a structured XML format, which are discussed *infra* in Part IV.E.2.

<sup>394</sup> See *supra* Part II.H.1.c.

<sup>395</sup> See *supra* Part II.H.1.a.

<sup>396</sup> See *supra* Part IV.C.2 (discussing these costs).

checkboxes that would help identify whether a registration statement is, for example, an automatic shelf registration statement or a short-form registration statement.<sup>397</sup> We already require registrants to tag all of the information on the cover page of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F using Inline XBRL in accordance with the EDGAR Filer Manual. The proposed requirement to tag the Form N-2 cover page in Inline XBRL is expected to benefit investors, the Commission, and other data users. Investors would be able to automate their use of the cover page information, including company name, the Act or Acts to which the registration statement relates, and checkboxes relating to the effectiveness of the registration statement. This would enhance investors' ability to identify, count, sort, and analyze registrants and disclosures to the extent these data points otherwise would be formatted, for example, in HTML. The proposed checkboxes, which would be required to be tagged in Inline XBRL format, would allow investors, Commission staff, and other data users to distinguish between different categories of registration statements in much the same way they are currently able to do for operating companies. The availability of information in Inline XBRL could enable data users to capture and analyze cover page information more quickly and at a lower cost, as well as to search and analyze the information dynamically. It could also facilitate comparison of information across filers and reporting periods.

Affected funds would incur some costs to tag and review the required information in Inline XBRL. Some filers may perform the tagging in-house while others may retain outside service providers. We expect the outside service providers to pass along their costs to filers. Various XBRL preparation solutions have been developed and used by operating companies and open-end fund filers, and some evidence suggests that, for operating companies, XBRL tagging costs have decreased over time.<sup>398</sup> Inline XBRL is a specification

of XBRL that allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit,<sup>399</sup> which can make XBRL preparation more efficient and less costly. Costs of Inline XBRL preparation may depend on the familiarity of the filer and/or its service provider with Inline XBRL. Incremental costs of compliance with the proposed tagging requirement would be lower for affected funds whose advisers already are required to report information for other investment products they offer, such as open-end funds, in XBRL. Additionally, in a separate rulemaking, we have required BDCs to tag the cover pages of their 10-K, 10-Q, and 8-K filings.<sup>400</sup> Complying with those amendments would result in BDCs having the ability to also tag the information on the cover page of Form N-2, and at reduced incremental cost. Nevertheless, we recognize that some registrants affected by the proposed requirement, particularly filers with no Inline XBRL experience, likely would incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and the incremental effect of any initial fixed costs of complying with the Inline XBRL requirement may be greater for smaller affected funds. On an ongoing basis, registrants are expected to expend time to tag and review the tagged information in Inline XBRL using their in-house staff. Some registrants may also incur an initial cost to license filing preparation software with Inline XBRL capabilities from a software vendor, and some may also incur an ongoing licensing cost. Other registrants may incur an initial cost to modify their existing filing preparation software to accommodate Inline XBRL preparation. Some registrants would incur the costs of filing agent services to rely on a filing agent to prepare their Inline XBRL filings. Initial costs involving investments in expertise and modifications to disclosure preparation solutions, or switching to a different software vendor or outside service provider, may result in a higher compliance cost during the first year of using Inline XBRL than in subsequent years. We recognize that some ongoing fixed costs of complying with the Inline XBRL requirement may be greater for smaller affected funds.

The costs of compliance with the proposed Inline XBRL requirements are likely to vary across registrants. On

average we estimate that the compliance cost to BDCs of tagging financial statement information, certain prospectus disclosure items, and Form N-2 cover page information using Inline XBRL would be approximately \$152,324 per BDC per year in the 3 years following the adoption of the proposed rules.<sup>401</sup> We estimate that the compliance cost to registered CEFs of tagging in Inline XBRL format certain prospectus disclosure items and tagging Form N-2 cover page information would be approximately \$7,191 per registered CEF per year in the 3 years following the adoption of the proposed rules.<sup>402</sup> We note that some recent surveys based on operating companies suggest that these current PRA-based burden estimates may be overstated with respect to operating companies, and particularly smaller reporting companies.<sup>403</sup> Below, we request comment on whether our current PRA estimates continue to be appropriate.

As an alternative, we could have proposed to allow but not require affected funds to present cover page, financial statement, and important prospectus disclosure items information in Inline XBRL. Compared to the proposed rules, a fully voluntary Inline XBRL program would lower costs for those filers that do not find Inline XBRL to be cost efficient. We also could have

<sup>401</sup> For BDCs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 30,503 burden hours of in-house Inline XBRL preparation and \$3,488,200 in outside services. See *infra* Part V.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of \$400 per hour (30,503 × \$400 = \$12,201,200). The estimated wage figure is based on analysis in previous rulemakings. The average cost per BDC is calculated by adding the monetized internal burden (\$12,201,200) to the cost of outside services (\$3,488,200) and dividing by the number of BDCs (103).

<sup>402</sup> For registered CEFs, for the purposes of the PRA, we estimated the average annual compliance costs in the 3 years following the adoption of the rule to be 10,725 burden hours of in-house Inline XBRL preparation and \$772,200 in outside services. See *infra* Part V.B.2. We monetize the burden of in-house Inline XBRL preparation by multiplying the burden hours by an estimated wage rate of \$400 per hour (10,725 × \$400 = \$4,290,000). The estimated wage figure is based on analysis in previous rulemakings. The average cost per registered CEF is calculated by adding the monetized internal burden (\$4,290,000) to the cost of outside services (\$772,200) and dividing by the number of registered CEFs (704).

<sup>403</sup> See American Institute of CPAs, *XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study* (Aug. 18, 2018), available at <https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.html>; CFA Institute, *The Cost of Structured Data: Myth vs. Reality*, available at <https://www.cfainstitute.org/-/media/documents/survey/the-cost-of-structured-data-myth-vs-reality-august-2017.ashx>.

<sup>397</sup> See *supra* Part II.H.1.b.

<sup>398</sup> See, e.g., AICPA sees 45% drop in XBRL costs for small companies, Aug. 15, 2018, Accounting Today (stating that, according to an updated survey by AICPA and XBRL US, the cost of formatting financial statements in XBRL for smaller reporting companies has declined 45% since 2014 and that 68.6% of the companies paid \$5,500 or less on an annual basis (as compared to 29.9% of companies in the 2014 survey) for fully outsourced creation and filing solutions for their XBRL filings, while 11.8% of the companies surveyed paid annual costs between \$5,500 to as much as \$8,000 for their full-service outsourced solutions).

<sup>399</sup> Inline XBRL Adopting Release, *supra* footnote 166, at 40851.

<sup>400</sup> See *supra* footnote 177.

proposed requiring the Inline XBRL requirements only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N-2 or WKSIs. We also could have proposed to permit more than one structured data format or leave the precise format unspecified. However, a voluntary program or the use of multiple structured data formats would also reduce potential data quality benefits compared to mandatory Inline XBRL, as would a program that captures only a subset of affected funds. If the information were not submitted by the affected funds in a standardized, structured, machine-readable format, investors and other data users who wish to instantly analyze, aggregate, and compare the data would be required to incur the costs of paying a third-party provider to manually rekey the data, review the data for data quality problems during the duplication process, and disseminate the data to the users.<sup>404</sup> Alternatively, investors or data users unwilling to pay a third-party provider would have to incur the time to do that process themselves. In either scenario, the data would not be usable in as timely a manner if it were made machine-readable in a standardized format. In addition, under a voluntary program, data that is not submitted in Inline XBRL would not be validated, thus decreasing the overall data quality of the data submitted. Unlike the machine readable XBRL format, data submitted in unstructured formats (e.g., HTML, ASCII) is not machine readable at the element level and thereby cannot be validated by EDGAR in any way. Thus, data submitted in the HTML format by affected funds that opted not to use Inline XBRL and XBRL data submitted by other affected funds could be different due to the level of pre-submission validation activities. Poor data quality reduces any data user's ability to meaningfully analyze, aggregate, and compare data.

As another alternative, we could propose to require the disclosures to be filed in another structured format, such as the non-Inline XBRL or XML format. Compared to the proposed Inline XBRL requirement, the use of the non-Inline XBRL format entails more duplication, which can adversely affect the quality and usability of the structured data as well as the efficiency and cost of preparation and review of the structured

data. Compared to the proposed requirement to use Inline XBRL, the alternative of requiring the use of XML could result in lower costs for filers. However, compared to the proposed amendments, XML would provide less flexibility in tagging complex information as well as less extensive data quality validation capabilities. Given the complexity of the information required to be tagged and its importance to investors, Commission staff, and other data users, we believe the benefits from the use of Inline XBRL would outweigh its higher cost compared to XML.<sup>405</sup>

As another alternative, we could have expanded the scope of prospectus disclosure information required to be tagged in Inline XBRL under the proposed rules. Compared to the proposed rules, this alternative would improve the timeliness and usability of the required disclosure information, but potentially impose additional costs on affected funds. To the extent that the other required prospectus disclosures of affected funds contain information that is more specific to individual funds without sufficient comparability or aggregation utility, the benefits of having those additional required disclosures in a structured format may be lower than the more limited subset of disclosures required to be filed in Inline XBRL under the proposed rules. As another alternative, we could have narrowed the scope of prospectus disclosure information required to be tagged in Inline XBRL under the proposed rules. Compared to the proposed rules, this alternative could decrease the timeliness and usability of the required disclosure information, but potentially reduce costs for registrants. Overall, the prospectus disclosure information proposed to be filed in Inline XBRL largely parallels the information that is required of mutual funds and ETFs, and we believe it is likely to be of greatest utility for investors and others that seek to use the information in a structured format to assist with investment decisions regarding affected funds.

We also are proposing to require registered investment companies that file Form 24F-2 (including mutual funds and ETFs, as well as interval funds under our proposed rules) to submit the form in a structured XML

format.<sup>406</sup> We believe use of a structured data format would make it easier for issuers to accurately prepare and submit the information required by Form 24F-2 and would make the submitted information more useful to Commission staff. Automated validation processes could help issuers compute registration fees accurately before submitting the filing, which could reduce administrative burdens associated with correcting inaccurate filings. A structured filing format could also facilitate pre-population of previously-filed information. We estimate the cost of tagging Form 24F-2 in a structured XML format to be \$522 per fund.<sup>407</sup>

### 3. Periodic Reporting Requirements

We are proposing certain new annual report requirements for affected funds that file a short-form registration statement on Form N-2. These funds would be required to include in their annual reports certain information that they currently disclose in their prospectus—a table of fees and expenses, share price information, and a table of senior securities—and a discussion of unresolved staff comments.<sup>408</sup> In addition, all BDCs would be required to include financial highlights in their registration statements and annual reports.<sup>409</sup> We also propose to require all registered CEFs to provide management's discussion of fund performance in their annual reports.<sup>410</sup> Finally, registered CEFs that rely on rule 8b-16 under the Investment Company Act to avoid annually updating their registration statements would be required to provide more expansive disclosure about certain key changes in their annual reports.<sup>411</sup> We believe these proposed requirements would promote investor protection by making important information more readily accessible to investors.

With respect to affected funds filing short-form registration statements on Form N-2, the proposed annual report requirements would compile certain information that is already available in a fund's registration statement. This could be beneficial to some investors in these funds since information would be readily available in one document instead of investors having the need to

<sup>406</sup> See *supra* Part II.H.1.d.

<sup>407</sup> We assume that the burden of tagging Form 24F-2 in a structured XML format would be 2 hours for each filing. See *infra* Part V.B.7. At an estimated wage rate of \$261 per hour, the dollar cost for filing Form 24F-2 in a structured XML format is \$522 (2 hours × \$261 per hour) per fund.

<sup>408</sup> See *supra* Part II.H.2.a and Part II.H.2.d.

<sup>409</sup> See *supra* Part II.H.2.c.

<sup>410</sup> See *supra* Part II.H.2.b.

<sup>411</sup> See *supra* Part II.H.5.

<sup>404</sup> Some studies have shown that investors use XBRL files often, even preferring them to non-XBRL files when both are available. See Yu Cong, Hui Du, and Miklos A. Vasarhelyi, *Are XBRL Files Being Accessed? Evidence from the SEC EDGAR Log File Dataset*, Journal of Information Systems, Vol. 32-3, 23-29 (2018).

<sup>405</sup> In contrast, the information provided in Form 24F-2 is less complex and is generally only used by fund issuers and Commission staff for purposes of calculating certain registered investment companies' registration fees, so we have proposed to require Form 24F-2 information in a structured XML format rather than Inline XBRL.

compile it from several sources. As previously noted, given the ability of affected funds to use forward incorporation by reference under the short-form registration instruction, these funds' annual reports may become a more convenient and comprehensive source of information about a particular seasoned fund, relative to that fund's registration statement. At the same time, the proposed annual report requirements may increase the compliance costs for seasoned funds because new information items would have to be added to the annual report. However, because the annual report would be incorporated by reference into the fund's prospectus, requiring disclosure in both the prospectus and annual report should not require duplicative disclosure. Moreover, specifying identical disclosure requirements in both places may facilitate forward incorporation by reference, by making clear that the same required disclosure will satisfy both requirements. Alternatively, we could have proposed to require affected funds to include in their annual reports more or less information from their registration statements. While requiring less information would reduce costs to affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors to find important fund information. Requiring affected funds to include more prospectus information in their annual reports than we have proposed could increase the length and complexity of annual reports and make them less useful to investors overall. This alternative would also increase affected funds' compliance costs.

The proposed requirement to disclose unresolved staff comments in the annual report is designed to mitigate the concern that other aspects of the proposal may eliminate some incentives that certain affected funds may have to resolve staff comments in a timely manner. This requirement may, however, impose certain compliance costs to the extent a seasoned fund does not timely resolve staff comments and hence would be required to provide such disclosure. We do not believe these disclosure costs would be significant because the information would be readily available to the affected fund. We recognize, however, there could be some costs to affected funds associated with compliance and legal review to the extent an affected fund wanted to provide additional information in its annual report disclosure beyond that provided in the fund's written response to the staff's comment (which would

typically already be publicly available on EDGAR).

With respect to the proposal to require BDCs to provide financial highlights information, we believe that investors would benefit from disclosure summarizing a BDC's financial statements. We believe the costs associated with this proposed requirement should be minimal since we understand that it is general market practice for BDCs to include this information in their registration statements.

We believe the proposal to require registered CEFs to include MDFF disclosure would be beneficial to investors by helping them assess a fund's performance over the prior year and complementing other information in the report, which may make the annual report disclosure more understandable as a whole. This requirement would also promote parity between different types of funds, as open-end funds and BDCs are already required to provide similar disclosure in their annual reports. This proposed requirement would likely increase compliance burdens for registered CEFs, to the extent they do not voluntarily provide MDFF disclosure already. We believe that a majority of registered CEFs already provide MDFF-like disclosure in their annual shareholder reports. We estimate the annual cost of providing MDFF disclosure to be \$8,000 per registered CEF,<sup>412</sup> although this cost would likely be lower for affected funds that already provide MDFF-like disclosure.

We considered proposing additional MDFF requirements, such as requirements to: (1) Disclose the impact of particular investments (including large positions and/or significant investments) or investment types that contributed to or detracted from performance; (2) explain a fund's performance in relation to its index; (3) explain how the use of leverage affected fund performance; (4) explain the reason for and effect of any large cash or temporary defensive positions on fund performance; (5) explain the effect of any tax strategies, or the effects of taxes, on fund performance; (6) explain the effect of non-recurring or non-cash income on fund performance; (7) include general discussion of purchases and sales of fund shares and the effects

<sup>412</sup> For the purpose of the PRA, we estimate that the proposed amendments to require registered CEFs to provide MDFF in their annual reports would result in an additional 20 burden hours for registered CEFs. See *infra* Part V.B.3. We monetize the internal burden by multiplying the burden hours by an estimated wage rate of \$400 per hour ( $20 \times \$400 = \$8,000$ ).

of any share repurchases or tender offers on fund performance; and/or (8) disclose whether the fund engages in high portfolio turnover and the effect of portfolio turnover on fund performance. We also considered proposing changes to the proposed average annual total return table to provide additional or more useful information to investors, such as requiring total return based on per-share net asset value, in addition to (as is proposed) total return based on current market price. Although one or more of these changes could result in additional, potentially helpful information for investors, we also considered the administrative costs that additional disclosure requirements would impose and have determined not to propose them at this time.

Under the proposed amendments to rule 8b-16, registered CEFs relying on the rule would be required to describe certain key changes that occurred during the relevant year in enough detail to allow investors to understand each change and how it may affect the fund. We estimate that approximately 489 registered CEFs relied on rule 8b-16 as of December 31, 2018.<sup>413</sup> These registered CEFs also would be required to preface this disclosure with a legend clarifying that the disclosures provide only a summary of certain changes that have occurred in the past year, and that the summary may not reflect all of the changes that have occurred. We believe this new requirement would allow investors in funds relying on rule 8b-16 to more easily identify and understand key information about their investments. Because these funds are already required to disclose the enumerated changes, the proposed new requirement would likely add only a small incremental compliance burden.

#### 4. New Current Reporting Requirements for Affected Funds

Currently, registered CEFs generally are not required to report information on Form 8-K, although listed registered CEFs are subject to exchange rules that require listed issuers to provide the market current information in response to certain events. We are proposing to require that registered CEFs comply with Form 8-K reporting requirements. Notably, Form 8-K would require disclosure within 4 business days of the relevant event, while the existing regime for registered CEFs calls for disclosure on an annual or semi-annual basis, with exchange rules requiring some current disclosure from listed registered CEFs.

We are also proposing amendments to Form 8-K to add certain new reporting

<sup>413</sup> See *infra* footnote 584.

items that would apply to both BDCs and registered CEFs to better tailor Form 8-K disclosure to these types of investment companies. The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies. The new reportable events would be triggered if an affected fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment.

We believe these amendments would improve current reporting of important information by affected funds to investors and the market, thus promoting investor protection. For example, the proposed requirement to file a Form 8-K report when an affected fund materially changes its investment objectives or policies would provide investors with more timely information about significant changes to a fund's investment strategies, which would allow investors to better assess whether a new investment strategy is aligned with their individual investment goals. Requiring Form 8-K reporting about material write-downs of significant investments would give investors more current information about events that are likely to significantly impact the value of their investments, particularly with respect to affected funds' less liquid holdings where there is a lack of market transparency regarding potential valuation changes between funds' periodic reports.

Additionally, while affected funds may provide certain current information to investors or the market through press releases, and BDCs must report under existing Form 8-K provisions, requiring all affected funds to provide information on Form 8-K—including information that is tailored to the business and structure of affected funds—would better standardize the types of information that affected funds report and would make current information about affected funds more readily accessible in one place (EDGAR). Enhancing the amount of current information about affected funds available to investors and the market could facilitate more efficient pricing of affected funds' shares (to the extent they do not trade at NAV) and could make it easier for an affected fund to develop a market following, which could improve its ability to attract new investors.

Requiring affected funds to provide new current reporting may increase their compliance costs. For example, registered CEFs generally are not required to report information on Form 8-K and currently may not be subject to

any disclosure requirements related to certain Form 8-K events. As discussed above, however, 75 registered CEFs reported information on Form 8-K voluntarily in 2018, whether pursuant to exchange rules or otherwise.<sup>414</sup> Additionally, listed registered CEFs, and any other registered CEFs that make voluntary disclosures on Form 8-K, may be able to leverage their experience with making certain prompt, public disclosures to comply with Form 8-K requirements. Those registered CEFs that are not exchange-listed, and that do not currently report information on Form 8-K, would not have prior experience to leverage, and thus the relative burdens associated with the proposed Form 8-K requirements could be higher for these funds if their advisers do not also advise other funds that file reports on Form 8-K.

Also, we recognize that certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, although the existing requirements provide less-timely disclosure. This should reduce burdens to some extent since registered CEFs are already familiar with providing such disclosure. However, we recognize there are certain costs associated with potentially duplicative disclosure requirements, although we believe these costs should not be significant. These costs would be associated with preparing the Form 8-K disclosure. We do not anticipate that the proposed Form 8-K requirements would increase affected funds' compliance costs associated with existing disclosure requirements. The proposed requirements may, to some extent, reallocate certain of affected funds' existing disclosure costs to preparing Form 8-K disclosure since affected funds may be able to use the Form 8-K disclosure to help prepare disclosures that they are currently required to provide in annual or other periodic reports. Further, we believe it would be beneficial to investors to retain existing shareholder report disclosure requirements to reduce potential disruptions to shareholders and limit discrepancies between different types of funds' shareholder reports.

With regard to the new reportable events on Form 8-K that we are proposing, all affected funds would have to monitor for and report these new events on Form 8-K, which would likely increase compliance costs, including costs associated with preparing and filing the new Form 8-K

disclosure. We believe that affected funds will be aware of information regarding these events, as this information is important for their operations, and thus it would not impose substantial costs for them to supply it on Form 8-K. We also believe that these events, along with those currently covered by Form 8-K, will occur relatively infrequently. This should reduce the associated reporting burden. The existing items on Form 8-K generally have not led to frequent reporting obligations for BDCs. For example, over a 3-year period from June 1, 2015 to May 31, 2018, BDCs filed or furnished approximately 3,080 reports on Form 8-K, with an estimated average of 10 reports per BDC per year.<sup>415</sup> Of the 3,080 reports, approximately 931 were furnished or filed under non-mandatory reporting items—Item 7.01 (Regulation FD Disclosure) and Item 8.01 (Other Events).<sup>416</sup> Further, over this 3-year period, BDCs filed or furnished 25 or fewer reports under 15 of the 23 mandatory reporting items applicable to non-ABS issuers. We estimate the overall costs of reporting new information on Form 8-K to be \$19,553,600 per fund for registered CEFs<sup>417</sup> and \$206,000 per fund for BDCs.<sup>418</sup>

Also, we are proposing to extend the safe harbor for failure to report certain Form 8-K items to include the new proposed reporting items for affected funds. Failure to report under these proposed items also would not impact an affected fund's eligibility to file a short-form registration statement on Form N-2. This should limit liability concerns and the potential impact on an

<sup>415</sup> As noted above, as of December 31, 2018, there were 103 BDCs. If we assume there were 103 BDCs over the three-year period and approximately 1,027 reports each year ( $3,080/3 = 1,027$ ) distributed evenly across each BDC, then each BDC would have filed approximately 10 Form 8-K reports each year ( $1,027/103 = 10$ ).

<sup>416</sup> Some of these 931 reports were filed under Item 9.01 (Financial Statements and Exhibits), in addition to Item 7.01 or Item 8.01.

<sup>417</sup> For purposes of the PRA, we estimate the annual incremental paperwork burden for CEFs to prepare and file the Form 8-K under the proposed amendments would be approximately 36,663 burden hours of internal time and a cost of approximately \$4,888,400 for the services of outside professionals. See *infra* Part V.B.6. We monetize the internal burden by multiplying the burden hours by an estimated wage rate of \$400 per hour ( $36,663 \times \$400 = \$14,665,200$ ).

<sup>418</sup> For purposes of the PRA, we estimate the annual incremental paperwork burden for BDCs to prepare and file the Form 8-K under the proposed amendments would be approximately 386.25 burden hours of internal time and a cost of approximately \$51,500 for the services of outside professionals. See *infra* Part V.B.6. We monetize the internal time by multiplying the burden hours by an estimated wage rate of \$400 per hour ( $386.25 \times \$400 = \$154,500$ ).

<sup>414</sup> Only 10 of those 75 registered CEFs were unlisted registered CEFs.



affected fund's ability to raise capital associated with failing to timely file a report under these items.

As an alternative, we could have not proposed to require current reporting on Form 8-K by certain or all registered CEFs. For example, we could have proposed to require Form 8-K reporting for only listed registered CEFs, or only those registered CEFs that qualify as WKSIs or are eligible to use a short-form registration statement. This approach would reduce costs for certain registered CEFs, but it would also create informational disparities among registered CEF investors and disadvantage investors in unlisted registered CEFs. Unlisted registered CEFs already may provide less transparency than listed registered CEFs in certain respects given that unlisted registered CEFs are not required to provide current information under exchange rules. Further, if we excluded all registered CEFs from Form 8-K reporting, this approach would disproportionately advantage registered CEFs as opposed to BDCs and operating companies, particularly with respect to those that are permitted to qualify as WKSIs or seasoned issuers.

We also could have proposed to require affected registered CEFs to file Form 8-K, but not added any new items tailored to BDCs and registered CEFs. Such an alternative may decrease the compliance costs for affected funds, while at the same time addressing the current lack of parity between registered CEFs and BDCs in terms of current reporting to investors and the market. We believe, however, that the proposed reporting items would enhance the information flow to investors and the market by providing timely and important value-relevant information. We also believe that it enhances parity between affected funds and operating companies with respect to the amount of current information available to investors since affected funds are unlikely to report information under several existing Form 8-K items.

As a further alternative, we could have proposed to tailor the Form 8-K requirements to affected funds by identifying certain items these funds would not be required to report. This approach could have reduced costs to affected funds by expressly providing that they are not required to monitor for or report certain events. However, while we believe that certain items will never or very rarely create reporting obligations for affected funds, excluding affected funds from certain reporting requirements may unduly complicate Form 8-K and may not provide tangible benefits since affected funds are

unlikely to be subject to such reporting requirements regardless of whether we provide specific exclusions.

Finally, rather than propose to require affected funds to report information about material write-downs of significant investments, we could have proposed to require them to file Form 8-K reports when they experience a significant decline in NAV. This approach would apply more generally to all affected funds (rather than only those funds that hold significant investments) and would likely result in more Form 8-K reporting by affected funds, which could increase the flow of information to investors that is relevant to their investment decisions. While additional reporting could also increase costs to affected funds, a decline in NAV could be easier for affected funds to monitor and report. However, some affected funds already publicly disclose their NAVs on a daily or weekly basis, which could result in any associated Form 8-K reporting providing stale information. Since affected funds disclose their NAVs at different frequencies—ranging from daily to semi-annually—establishing a baseline for measuring a decline in NAV would present certain difficulties and would likely result in either inconsistent reporting standards across affected funds or less-relevant reporting by certain funds.

#### 5. Online Availability of Information Incorporated by Reference

We are proposing to modernize Form N-2's requirements for backward incorporation by reference by all affected funds.<sup>419</sup> Affected funds would no longer be required to deliver to new investors information that they have incorporated by reference. Instead, we are proposing that these funds make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a website maintained by or for the fund and identified in the fund's prospectus or SAI.

We believe that this new requirement would improve the information's overall accessibility to investors. In particular, this new requirement would make the incorporated information, prospectus, and SAI more accessible to retail investors, who we believe may be more inclined to look at a fund's website for information than to search the EDGAR system.<sup>420</sup> Affected funds would also be

required to provide incorporated materials upon request free of charge. In addition, the proposed rule would increase the likelihood that fund investors view the information in their preferred format, and thereby increase their use of the information to make investment decisions.

We do not expect that this proposal would result in a substantial reduction in the amount of the information affected funds deliver to investors through the mail or electronically, because we expect that most affected funds would rely on rules 172 and 173, as we propose to amend them, to satisfy their prospectus delivery obligations. An issuer that uses these rules will satisfy its final prospectus delivery obligations by filing the prospectus with the Commission rather than delivering the prospectus and any incorporated material to investors.<sup>421</sup>

We do not believe this requirement would generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites. We estimate the annual cost to comply with the proposed website posting requirements to be \$478 per fund.<sup>422</sup>

Affected funds may also incur printing and mailing costs under the proposal if some investors request paper copies of the prospectus<sup>423</sup> or of information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI.<sup>424</sup> In another release, the Commission estimated that the annual printing and mailing cost associated with providing copies of prospectuses and other documents upon request would be approximately \$500 per registrant.<sup>425</sup> We are similarly proposing a requirement to send prospectuses and related information here, and we have no reason to assume significant differences in the average lengths of the associated materials or the frequency of

Investment Company Institute (available at <http://www.ici.org/research/stats/factbook>) suggests an increasing trend of U.S. households using the internet for financial purposes.

<sup>421</sup> See *supra* Part II.D.

<sup>422</sup> For the purpose of the PRA, we estimate an average burden to comply with the website posting requirements of 2 hours per fund. See *infra* Part V.B.1. The expected compliance cost associated with the proposed website posting requirements is calculated by multiplying the 2-hour burden by the estimated hourly wage based on published rates for webmasters (\$239). See also Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172, at 61832.

<sup>423</sup> See *supra* footnote 109.

<sup>424</sup> See *supra* Part II.H.4.

<sup>425</sup> See Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172, at 61812, 61832.

<sup>419</sup> See *supra* Part II.H.4.

<sup>420</sup> For example, results from a 2011 investor testing sponsored by the Commission (available at [www.sec.gov/comments/s7-08-15/s70815.shtml](http://www.sec.gov/comments/s7-08-15/s70815.shtml)) suggest that an investor looking for a fund's annual report is most likely to seek it out on the fund's website. Additionally, a 2015 survey by the



investor requests under this proposal. We estimate that the printing and mailing costs associated with the proposed requirements would be approximately \$750 per fund in recognition that the requirement to deliver information that has been incorporated by reference may result in greater overall costs since affected funds that are eligible to file short-form registration statements under the proposal would be able to use incorporation by reference more frequently.<sup>426</sup> We anticipate, however, that investors may be less likely to request copies of materials that have been incorporated by reference into an affected fund's prospectus or SAI, so we believe this requirement would only incrementally increase costs.

Alternatively, we could have left Form N-2's backward incorporation by reference requirements as-is and continued to require funds to deliver incorporated materials to new investors. Because current General Instruction F of Form N-2 does not require affected funds to make incorporated materials available online, funds would not have to incur costs associated with website posting. However, because affected funds that choose to rely on rules 172 and 173, as proposed, would be deemed to have delivered their disclosures upon filing with the Commission instead of giving them to investors, the current backward incorporation delivery requirement would not result in the delivery of incorporated materials to their investors, thus making less accessible the disclosure materials that might affect their investment decision.

#### F. Request for Comments

We request comment on the potential costs and benefits of the proposed rules and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, particularly as they relate to costs and benefits estimates. Our specific questions follow.

- We seek information that would help us quantify or otherwise qualitatively assess the benefits of the proposed rules. Please provide any data, studies, or other evidence that would allow us to quantify some or all of the

benefits. Are there any other benefits from the proposed rules?

- We seek information that would help us quantify compliance and other costs resulting from the proposed rules. Please provide any data, studies, or other evidence that would allow us to quantify some or all of the costs. Are there any other potential costs of the proposed rules?

- Are our estimates of the compliance costs of requiring affected funds to tag in Inline XBRL format certain information reasonable? Is there a fixed component of the XBRL reporting? Are there any other types of costs that should be considered? Are affected funds more likely perform the tagging in-house or retain outside service providers?

- Are our estimates of the compliance costs of requiring registered CEFs to include MDPF disclosure in their annual reports reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring registered CEFs to report information on Form 8-K, and requiring affected funds to provide new current reporting on Form 8-K, reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring affected funds to make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a website maintained by or for the fund reasonable? Are our estimates of the compliance costs of requiring affected funds to deliver a copy of information incorporated by reference into its prospectus or SAI to investors upon request reasonable? Are there any other types of costs that should be considered?

- Are our estimates of the compliance costs of requiring registered investment companies that file Form 24F-2 to file it in an XML format reasonable? Are there any other types of costs that should be considered?

- Are there any other potential effects on competition, efficiency, and capital formation that could result from the proposed rules?

#### V. Paperwork Reduction Act Analysis

##### A. Background

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).<sup>427</sup> We are submitting the proposed amendments to the Office

of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles for the collection of information are:

Title	OMB control No.
Form N-2 .....	3235-0026
Mutual Fund Interactive Data <sup>428</sup> .....	3235-0642
Rule 30e-1 .....	3235-0025
Form 10-K .....	3235-0063
Family of rules under section 8(b) of the Investment Company Act of 1940 <sup>429</sup> ..	3235-0176
Rule 163 .....	3235-0619
Rule 433 .....	3235-0617
Rule 173 .....	3235-0618
Form 8-K .....	3235-0060
Form 24F-2 .....	3235-0456

The rules, forms, and regulations listed above were adopted under the Securities Act, the Exchange Act, or the Investment Company Act. They set forth the disclosure requirements for registration statements, prospectuses, periodic and current reports, and certified shareholder reports that are prepared by registrants to help investors make informed investment and voting decisions. They also permit additional communications by registrants during a registered offering. The proposed amendments, if adopted, would allow affected funds to use the securities offering rules that are already available to operating companies. In addition, the proposed rules would include amendments to our rules and forms intended to tailor the disclosure and regulatory framework to affected funds.

<sup>428</sup> Recently, we issued a release that, among other things, proposed to retitle this information collection as "Registered Investment Company Interactive Data." See Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172. If adopted, the proposed amendments to require BDCs to provide structured data would be included in this information collection. In light of these proposed amendments, we propose to rename this information collection as "Investment Company Interactive Data" to reflect that this information collection would be applicable to BDCs as well as registered investment companies.

<sup>429</sup> The paperwork burdens for the rules under section 8(b) of the Investment Company Act are imposed through the forms and reports that are subject to the requirements in these rules and are reflected in the PRA burdens of those documents. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to these rules.

<sup>426</sup> We do not have specific data regarding how often investors may request copies of prospectuses or incorporated materials, how many materials affected funds would incorporate by reference into their prospectuses or SAIs, and how lengthy those materials would be, so we request comment on this estimate.

<sup>427</sup> 44 U.S.C. 3501 *et seq.*

The Mutual Fund Interactive Data collection of information references current requirements for certain registered investment companies to submit to the Commission information included in their registration statements, or information included in or amended by any post-effective amendments to such registration statements, in response to certain items of Form N-1A in interactive data format. It also references the requirement for funds to submit an Interactive Data File to the Commission for any form of prospectus filed pursuant to rule 497(c) or (e) that includes information in response to same items of Form N-1A. The proposed amendments would include several new structured data requirements, including requirements for: (1) BDCs to submit financial statement information using Inline XBRL format; (2) affected funds to include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; and (3) affected funds to tag certain prospectus information using Inline XBRL format.<sup>430</sup> Although the proposed interactive data filing requirements would be included in the proposed Form N-2 instructions, we are separately reflecting the hour and cost burdens for these requirements in the burden estimate for Mutual Fund Interactive Data and not in the estimate for Form N-2.

The information collection requirements related to registration statements and Exchange Act reports would be mandatory. In addition, there would be no mandatory retention period for the information disclosed, and the information gathered would be made publicly available. The information collection requirements related to the communications and prospectus delivery proposals would apply only to affected funds and other offering participants choosing to rely on them. There would be a mandatory record retention period with respect to the communications and prospectus delivery information collections. Under rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the date of the initial bona fide offering of the securities in question that were not filed with the Commission. Moreover, free writing prospectuses that are made by or

on behalf of an affected fund, and free writing prospectuses that are broadly disseminated by another offering participant, would have to be filed and would be publicly available on EDGAR, whereas free writing prospectuses prepared by or on behalf of, or used or referred to, by offering participants other than the issuer would not have to be filed.

#### *B. Summary of the Proposed Amendments and Impact on Information Collections*

We are proposing amendments to several rules and forms that would modify the registration, communications, and offering processes for affected funds under the Securities Act and Investment Company Act. The proposals are designed to carry out the requirements of section 803 of the BDC Act and section 509 of the Registered CEF Act. The proposed amendments generally would allow affected funds to use the securities offering rules that are already available to operating companies.

The proposed amendments would principally affect five aspects of the application of our securities offering rules to affected funds. First, the proposed amendments would streamline the registration process under the Securities Act for affected funds to allow them to sell securities more quickly and efficiently under a shelf registration process tailored to affected funds. Second, the proposed amendments would allow affected funds to qualify as WKSIs under rule 405 under the Securities Act. Third, the proposed amendments would allow affected funds to satisfy final prospectus delivery requirements using the same method as operating companies. Fourth, the proposed amendments would allow affected funds to use communications rules currently available to operating companies, such as the use of certain factual business information, forward-looking information, a “free writing prospectus,” and broker-dealer research reports. Finally, the proposed amendments would tailor affected funds’ disclosure and regulatory framework in light of the proposed amendments to the offering rules applicable to them. These amendments include new structured data requirements, new disclosure requirements for annual reports, a new requirement for registered CEFs to file current reports on Form 8-K (including new Form 8-K items tailored to registered CEFs and BDCs), and a proposal to require interval funds to pay securities registration fees using the

same method that mutual funds and ETFs use today.

We anticipate that several provisions of the proposed amendments would increase the burdens and costs for affected funds that would be subject to the proposed amendments. We have estimated the average number of hours an affected fund would spend to prepare and file the information collections and the average hourly rate for the services of outside professionals. In deriving our estimates, we recognize that the burdens will likely vary among individual affected funds based on a number of factors, including their size and the nature of their investment activities. In addition, some affected funds may experience costs in excess of our estimates, and some may experience less than the estimated average costs.

#### **1. Proposed Amendments to Form N-2 Registration Statement**

Form N-2 is the form used by an affected fund to register offerings under the Securities Act and, as applicable, to register as an investment company under the Investment Company Act.

The proposed amendments to Form N-2 would increase the existing disclosure burdens of the form by requiring:

- Affected funds to use new checkboxes on the cover page to provide information about the fund, the purpose of the filing, and the type of offering, including whether the form is being used for automatic shelf registration;<sup>431</sup>
- BDCs to include financial highlights disclosure in their registration statements, as registered CEFs are currently required to do;<sup>432</sup>
- Affected funds to provide new undertakings to be furnished in registration statements being filed pursuant to rule 415;<sup>433</sup> and
- Affected funds to make certain documents available online if they incorporate them by reference, including the prospectus, SAI, and any Exchange Act reports filed under section 13 or section 15(d) of the Exchange Act that are incorporated by reference into the fund’s prospectus or SAI.<sup>434</sup>

At the same time, the proposed amendments to Form N-2 would decrease existing burdens for the form by:

<sup>431</sup> See *supra* Part II.H.1.b; see also proposed checkboxes to Form N-2.

<sup>432</sup> See *supra* Part II.H.2.c; see also proposed amendments to Instruction 1 to Item 4 of Form N-2.

<sup>433</sup> See *supra* footnote 53 and accompanying paragraph; see also proposed Items 34.4-7 of Form N-2.

<sup>434</sup> See *supra* Part II.H.4; see also proposed General Instruction F.4.a of Form N-2.

<sup>430</sup> We are also proposing new requirements for funds that file on Form 24F-2 to submit the form in XML format. We account for the burdens associated with this proposed requirement in *infra* Part V.B.7.

- Permitting eligible affected funds to forward incorporate by reference Exchange Act reports, which would reduce the need for such funds to file a post-effective amendment or a prospectus supplement to update information in the registration statement.<sup>435</sup>

The Commission has previously estimated that there are 136 initial registration statements and 30 post-effective amendments to initial registration statements filed on Form N-2 annually.<sup>436</sup> Under the most-recently approved PRA estimates, we estimate that the hour burden for preparing and filing an initial registration statement on Form N-2 is 515 hours, and the hour burden for preparing and filing a post-effective amendment is 107 hours.<sup>437</sup> Under these estimates, the aggregate annual hour burden for preparing and filing initial registration statements is therefore 70,040 hours (136 initial registration statements × 515 hours), and the current estimated aggregate annual hour burden for preparing and filing post-effective amendments is 3,210 hours (30 post-effective amendments × 107 hours). Thus, under these estimates, the current total annual hour burden for Form N-2 is estimated to be 73,250 hours (70,040 hours + 3,210 hours). In addition, under currently-approved PRA estimates, the aggregate annual cost burden for Form N-2 is \$4,668,396,<sup>438</sup> and the average annual cost burden is approximately \$28,123 per fund.

Based on staff analysis of the number of initial Form N-2 filings and post-effective amendments made during the three-year period from January 1, 2016 through December 31, 2018, we adjusted the currently-approved estimate of Form N-2 filings for purposes of this PRA analysis. Based on the three-year average of this adjusted number of Form N-2 filings, we currently estimate that there are 138 initial registration statements and 302 post-effective amendments to initial registration

statements filed on Form N-2 annually.<sup>439</sup>

We anticipate that the proposed amendments to Form N-2 would, on net, decrease the information collection burdens of the form. Our estimates of the hour and cost burdens of the proposed amendments are based on several estimates and assumptions.

First, we estimated the paperwork burdens of the proposed amendments that would increase the burdens of Form N-2. We expect that the proposed new checkbox requirements and undertakings would incrementally increase the paperwork burden on affected funds because affected funds would be required only to indicate which, if any, of the new checkboxes were applicable, and include the appropriate undertaking if one is required. Accordingly, we estimate that the proposed checkboxes and undertakings together would slightly increase the incremental paperwork burden of the form by 0.5 hours for an aggregate annual burden of 404 hours.<sup>440</sup> The proposed amendment to require BDCs to include financial highlights disclosure would also result in an increase in the burdens associated with the form. However, we note that BDCs currently provide this information in their Form N-2 filings. Accordingly, we estimate the proposed financial highlights disclosure requirement would incrementally increase the paperwork burden by 1.5 hours for an aggregate annual burden of 155 hours.<sup>441</sup> We estimate that the proposed amendment to require funds to make available online its prospectus, SAI, and any Exchange Act reports that are incorporated by reference into the fund's prospectus or SAI would incrementally increase the paperwork burden of the form by 2 hours for an aggregate annual burden of 1,614

hours.<sup>442</sup> In determining this estimate, we assumed that all eligible affected funds would take advantage of the incorporation by reference proposals and that the burdens of website posting of incorporated documents would be comparable to the burdens estimated for similar document posting requirements.<sup>443</sup> Based on this, we estimate that these amendments would increase the aggregate annual burden of Form N-2 by 2,173 hours,<sup>444</sup> and would result in an internal cost equivalent of \$658,419.<sup>445</sup>

We also estimated the paperwork burdens of the amendments that we anticipate would decrease the burdens of Form N-2. As we noted above, the proposal to permit the use of forward incorporation by reference would reduce the need for affected funds eligible to use the proposed short-form registration statement to file a post-effective amendment to update the registration statement. This would result in the filing of fewer post-effective amendments than under the current regulatory regime. Based on the staff's examination of Form N-2 filings during the three-year period from January 1, 2016 through December 31, 2018, we estimate that approximately 544 (or 60%) of the post-effective amendments filed during this period were made to update information in the registration statement under the Securities Act.<sup>446</sup> We estimate that 62% of affected funds (501 out of 807) would be eligible to use forward incorporation by reference under the proposed amendments. Consequently, we assumed that based on the number of affected funds that

<sup>442</sup> We calculated this estimate as follows: 807 (103 BDCs + 704 registered CEFs) funds subject to the requirement × 2 hours.

<sup>443</sup> See, e.g., Variable Contract Summary Prospectus Proposing Release, *supra* footnote 172.

<sup>444</sup> We calculated this estimate as follows: 404 hours (see *supra* footnote 440) + 155 hours (see *supra* footnote 441) + 1,614 hours (see *supra* footnote 442) = 2,173 hours.

<sup>445</sup> The internal time cost equivalent of \$658,419 is calculated by multiplying the hour burden (2,173 hours) by the estimated hourly wage of \$303. The estimated wage figure is based on published rates for Compliance Attorneys (\$352), Senior Programmers (\$319), and Webmasters (\$239). These hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year; multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and adjusted to account for the effects of inflation. The estimated wage rate was further based on the estimate that Compliance Attorneys, Senior Programmers, and Webmasters would divide time equally, resulting in a weighted wage rate of \$303 (((\$352 + \$319 + \$239)/3) = \$303.33).

<sup>446</sup> (290 post-effective amendments in 2016 + 320 post-effective amendments in 2017 + 296 post-effective amendments in 2018 = 906 post-effective amendments) × 60% = approximately 544 post-effective amendments.

<sup>435</sup> See *supra* Part II.B.2.c; see also proposed General Instruction F.3.b of Form N-2.

<sup>436</sup> These estimates are based on the last time the form's information collections were approved, pursuant to a submission for a PRA extension in 2016.

<sup>437</sup> The paperwork burdens for Form N-2 include the burdens of preparing and filing prospectus supplements. While affected funds may file fewer prospectus supplements under the proposed amendments, we are uncertain as to the extent, if any, of the reduction in the number of prospectus supplements that affected funds would file under the proposals. See *supra* Part II.B.

<sup>438</sup> This estimate includes the cost of outside counsel, independent auditors and the services of other professionals retained to assist in the preparation and filing of the form.

<sup>439</sup> Based on staff analysis of the number of Form N-2 filings, the numbers of initial registration statement and post-effective amendments filed on Form N-2 were as follows: 129 initial Form N-2s and 290 post-effective amendments in calendar year 2016; 140 initial Form N-2s and 320 post-effective amendments in calendar year 2017; and 144 initial Form N-2s and 296 post-effective amendments in calendar year 2018.

<sup>440</sup> We calculated this estimate as follows: 807 (103 BDCs + 704 registered CEFs) funds subject to the requirement × 0.5 hours. For convenience, the estimated burden has been rounded to the nearest whole number. Our estimate of costs and paperwork burdens that BDCs could incur may be over-estimates. See *supra* footnote 339 and accompanying text.

<sup>441</sup> We calculated this estimate as follows: 103 BDCs subject to the requirement × 1.5 hours. For convenience, the estimated burden has been rounded to the nearest whole number.

would be eligible to forward incorporate under the proposed amendments, the number of post-effective amendments filed annually to update the registration statement under the Securities Act would be reduced by 62% or approximately 112 filings annually.<sup>447</sup> For purposes of the PRA, we estimate that this would decrease the aggregate annual burden of Form N-2 by 11,984 hours and would result in a reduction in the cost burden for Form N-2 by \$3,149,776.<sup>448</sup>

For purposes of the PRA, we estimate that the proposed amendments to Form N-2 would result in a net reduction of the annual paperwork burden by approximately 9,811 hours of internal personnel time<sup>449</sup> and result in a reduction of the cost by approximately \$2,491,357.<sup>450</sup>

## 2. Proposed Structured Data Reporting Requirements

We are proposing to amend Form N-2, as well as Regulation S-T,<sup>451</sup> to require certain new structured data reporting requirements for registered CEFs and BDCs. Specifically, the proposed amendments would:<sup>452</sup>

- Require BDCs to submit financial statement information using Inline XBRL format;<sup>453</sup>
- Require all affected funds to include structured cover page information in their registration statements on Form N-2 using Inline XBRL, including the tagging of the proposed new checkboxes to the cover page of Form N-2;<sup>454</sup> and
- Require all affected funds to tag certain Form N-2 disclosure items using Inline XBRL.<sup>455</sup>

Operating companies filing registration statements under the Securities Act or reports under the Exchange Act are required to submit the information from the financial statements accompanying their registration statements and reports in Inline XBRL format. BDCs are currently excluded from these Inline XBRL requirements. The Commission previously estimated that operating companies submitting financial information in Inline XBRL format file, on average, 4.5 responses per year that contain interactive data, and that each response required 54 burden hours of internal time to prepare and cost \$6,175 for outside services.<sup>456</sup> The proposed amendments would subject BDCs to the same Inline XBRL reporting requirements. Therefore, we assume that BDCs would on average file the same number of filings containing financial statement information in Inline XBRL and would experience similar burden hours and costs as do operating companies.

The proposed amendments to require affected funds to tag certain Form N-2

prospectus disclosure items using Inline XBRL largely parallel similar information required by Form N-1A risk/return summary that must be tagged in Inline XBRL format. We have previously estimated that mutual funds and ETFs file 1.36 responses per year containing mutual fund risk/return data in Inline XBRL format, and that the risk/return XBRL requirements require funds to expend 10.5 hours of internal time per response and cost \$900 to purchase software and/or acquire the services of consultants or filing agents.<sup>457</sup> Consequently, we assumed that the hour and cost burdens of the proposed requirements to tag certain Form N-2 disclosure items would be similar to the hour and cost burdens of risk/return summary XBRL requirements.

We have also made several adjustments to our burden estimates to reflect certain aspects of the proposed amendments that are distinct from the previous burden estimates of Inline XBRL requirements. We increased our estimate of the initial burden hours and costs of the proposed amendments to reflect one-time compliance costs. Because BDCs and registered CEFs have not previously been subject to Inline XBRL requirements, we assumed that these funds would experience additional burdens related to one-time costs associated with becoming familiarized with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, and the training of staff. We also assumed that these one-time costs would decline in the second and third year of compliance with the proposed amendments, under the premise that these funds should become more efficient at preparing submissions using Inline XBRL format as the process becomes more routine. We assumed that the one-time cost would result in a 50% incremental increase in the internal burdens and external costs of the financial information and risk/return summary XBRL requirements during the first year,<sup>458</sup> and would subsequently decline in the second and third years by 75% from the immediately-preceding year.<sup>459</sup> Accordingly, we estimate the

<sup>447</sup> We calculated this estimate as follows: (544 post-effective amendments to update information in the registration statement under the Securities Act) / 3 years = approximately 181 post-effective amendments per year)  $\times$  62% = approximately 112 post-effective amendments per year.

<sup>448</sup> We calculated these estimates as follows: 112 post-effective amendments  $\times$  107 hours = 11,984 hours; 112 post-effective amendments  $\times$  \$28,123 = \$3,149,776.

<sup>449</sup> We calculated this estimate as follows: Estimate of increased aggregate annual burden hours (+2,173 hours, *see supra* footnote 444) plus estimate of decreased aggregate annual burden hours (– 11,984 hours, *see supra* footnote 448) = net decrease of 9,811 hours.

<sup>450</sup> We calculated this estimate as follows: Estimate of internal cost equivalent associated with proposed amendments to Form N-2 (\$658,419, *see supra* footnote 445) plus estimate of decreased cost burden associated with proposed amendment to Form N-2 (\$3,149,776, *see supra* footnote 448) = net decrease of \$2,491,357.

<sup>451</sup> 17 CFR 232.10 *et seq.* [OMB Control No. 3235–0424] (which specifies the requirements that govern the electronic submission of documents). Specifically, we are proposing to amend rule 405 of Regulation S-T. The additional collection of information burden that will result from the proposed amendments to rule 405 of Regulation S-T and to Form N-2, to require structured data reporting for affected funds, are included in our burden estimates for the “Investment Company Interactive Data” collection of information, and do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

<sup>452</sup> We are also proposing amendments to Form 24F-2 to require submission of this filing in a structured XML format. We discuss the PRA burdens of this proposal and other proposed amendments to the form below. *See infra* Part V.B.7.

<sup>453</sup> *See supra* Part II.H.1.a; *see also* proposed amendments to rule 405 of Regulation of S-T.

<sup>454</sup> *See supra* Part II.H.1.b; *see also* proposed General Instruction H.2.a to Form N-2.

<sup>455</sup> *See supra* Part II.H.1.c; *see also* proposed General Instruction H.2.a–c to Form N-2. The proposed amendments would require the following prospectus disclosure items be tagged using Inline XBRL: Fee Table; Senior Securities Table; Investment Objectives and Policies; Risk Factors; Share Price Data; and Capital Stock, Long-Term Debt, and Other Securities.

A seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag any information that is incorporated by reference from an Exchange Act report, such as those on Forms N-CSR, 10-K, or 8-K, in response to a disclosure item of the registration statement that is required to be tagged. *See supra* footnote 186 and accompanying text.

<sup>456</sup> *See* Inline XBRL Adopting Release, *supra* footnote 166, at 40869. A recent survey suggests that these current burden estimates may be overstated with respect to smaller reporting companies. *See* American Institute of CPAs, *XBRL Costs for Small Companies Have Declined 45%, According to AICPA Study* (Aug. 18, 2018), available at <https://www.aicpa.org/press/pressreleases/2018/xbrl-costs-have-declined-according-to-aicpa-study.html>. Below, we request comment on whether our current PRA estimates continue to be appropriate.

<sup>457</sup> *Id.*

<sup>458</sup> Thus, for the proposed financial information XBRL requirement, we estimate that in the first year the one-time cost would be an additional 27 hours (54  $\times$  0.5) and \$3,087.5 in external costs (\$6,175  $\times$  0.5). For the proposed prospectus information XBRL requirements, we estimate the initial increase in burdens would be 5.25 hours (10.5  $\times$  0.5) and \$450 in external costs (\$900  $\times$  0.5).

<sup>459</sup> Thus, we estimate that for the second year the one-time hour burden and cost of the proposed financial information XBRL requirement would be 6.75 hours (27 hours – (27  $\times$  0.75 = 20.25 hours))

(Continued)

burdens for the proposed amendment to require BDCs to submit financial the information in Inline XBRL format would be 65.81 hours of internal time<sup>460</sup> and cost \$7,525.78 for outside services,<sup>461</sup> and we estimate the burdens for the proposed amendments to require affected funds to tag certain information that is required to be included in an affected fund's prospectus using Inline XBRL format would be 12.8 hours in internal time<sup>462</sup> and cost \$1,096.88 for outside services.<sup>463</sup>

We assumed that affected funds would submit a similar number of responses as the number of submitted responses that we currently estimate that contain mutual fund risk/return data in Inline XBRL. Currently, the mutual fund risk/return summary interactive data is required to be submitted with the Form N-1A (or a post-effective amendment thereto), a post-effective amendment under rule 485(b) of the Securities Act, or any form of prospectus filed under rule 497(c) or 497(e) of the Securities Act. The Commission previously estimated that each mutual fund or ETF would submit one response containing Inline XBRL interactive data as an exhibit to a registration statement or a post-effective amendment thereto, and that 36% of these funds would submit an additional response containing Inline XBRL interactive data as an exhibit to a filing pursuant to rule 485(b) or rule 497. Under the proposed amendments, affected funds would be required to submit in Inline XBRL the specified Form N-2 disclosure items with their

and \$771.87  $(\$3,087.5 - (\$3,087.5 \times 0.75 = \$2,315.63))$ . For the third year, we estimate that these hour burdens and costs would be 1.69 hours  $(6.75 \text{ hours} - (6.75 \times 0.75 = 5.06 \text{ hours}))$  and \$192.97  $(\$771.87 - (\$771.87 \times 0.75 = \$578.90))$ . Average yearly change in the initial one-time cost of the proposed financial information XBRL requirement would be  $(27 + 6.75 + 1.69)/3 = 11.81$  hours of internal in-house time, and  $(\$3,087.5 + \$771.87 + \$192.97)/3 = \$1,350.78$  in external costs.

For the second year, we estimate the one-time hour burden and cost of the proposed prospectus information XBRL requirements would be 1.31 hours  $(5.25 \text{ hours} - (5.25 \text{ hours} \times 0.75 = \text{approximately } 3.94 \text{ hours}))$  and \$112.50  $(\$450 - (\$450 \times 0.75 = \$337.5))$ . For the third year, we estimate that these hour burdens and costs would be 0.33 hours  $(1.31 \text{ hours} - (1.31 \text{ hours} \times 0.75 = 0.98 \text{ hours}))$  and \$28.12 in external costs  $(\$112.50 - (\$112.50 \times 0.75 = \$84.38))$ . Average yearly change in the initial one-time cost of proposed prospectus information XBRL requirements would be  $(5.25 + 1.31 + 0.33)/3 = 2.3$  hours of internal in-house time, and  $(\$450 + \$112.50 + \$28.12)/3 = \$196.87$  in external costs.

<sup>460</sup> This estimate was calculated as follows:  $54 + 11.81 = 65.81$  hours.

<sup>461</sup> This estimate was calculated as follows:  $\$6,175 + 1,350.78 = \$7,525.78$ .

<sup>462</sup> This estimate was calculated as follows:  $10.5 + 2.3 = 12.8$  hours.

<sup>463</sup> This estimate was calculated as follows:  $\$900 + 196.87 = \$1,096.87$ .

initial registration statement (or a post-effective amendment thereto), as well as any form of prospectus filed pursuant to rule 424(b) that reflects a substantive change to the specified Form N-2 disclosure items. In the case of a seasoned fund that files a short-form registration statement that incorporates by reference the specified Form N-2 disclosure items from an Exchange Act report, the interactive data would be required to be submitted with that Exchange Act report. We estimate that affected funds would similarly submit one response containing the Inline XBRL interactive data as an exhibit to a registration statement on Form N-2, a post-effective amendment thereto, or to an Exchange Act report, and that 36% of the affected funds would submit an additional response containing Inline XBRL interactive data as an exhibit to a filing pursuant to rule 424.

We do not believe the cover page tagging proposal would result in significant additional burdens for affected funds. We have estimated that requiring operating companies to tag the cover pages of Forms 10-K, 10-Q, 8-K, 20-F, and 40-F using Inline XBRL would result in an incremental increase in the collection burdens by one hour.<sup>464</sup> Accordingly, we similarly estimate that the proposed amendment to require affected funds to tag Form N-2 cover page items would impose an increased paperwork burden of one hour.<sup>465</sup>

Based on these assumptions, we estimate the proposed amendments to require the submission of financial statement information in XBRL format would result in an aggregate yearly burden of approximately 30,503 hours of in-house personnel time<sup>466</sup> and \$3,488,199 in the cost of services of outside professionals.<sup>467</sup> We estimate that for all affected funds the proposed amendments to require the submission of specified Form N-2 disclosure items in Inline XBRL would result in an aggregate yearly burden of approximately 14,048 hours of in-house personnel time<sup>468</sup> and \$885,174 in the

<sup>464</sup> See FAST Act Modernization Adopting Release, *supra* footnote 177.

<sup>465</sup> We do not expect that this requirement would increase the cost for outside services because the cost of tagging the cover page by affected funds would be subsumed in the cost the submission of the Form N-2 disclosure items in Inline XBRL.

<sup>466</sup> For BDCs we calculated our internal hour estimate as follows:  $103 \text{ BDCs} \times 65.81 \text{ hours} \times 4.5 \text{ responses per year} = \text{approximately } 30,502.94$  burden hours per year. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>467</sup>  $103 \text{ BDCs subject to the requirements} \times 4.5 \text{ responses per year} \times \$7,525.78 = \$3,488,199.03$ .

<sup>468</sup> We calculated this estimate as follows:  $807 \text{ affected funds} \times 12.8 \text{ hours} \times 1.36 \text{ responses per}$

cost of services of outside professionals.<sup>469</sup> We estimate that the proposed amendment to require the tagging of Form N-2 cover page items would result in an aggregate yearly burden of approximately 807 hours of in-house personnel time.<sup>470</sup>

### 3. Proposed New Annual Reporting Requirements Under Rule 30e-1 and Exchange Act Periodic Reporting Requirements for BDCs

Several of the offering reforms that we are proposing, such as the amendments that would allow certain affected funds to use an automatic shelf registration statement or to forward incorporate by reference Exchange Act reports, may raise the importance of an affected fund's Exchange Act reports to investors.<sup>471</sup> In light of this, we are proposing new disclosure requirements for affected funds' annual reports. Specifically, we are proposing to amend:

- Form N-2 to require affected funds using the proposed short-form registration statement to disclose in their annual reports a fee and expense table, share price data, a senior securities table, and unresolved staff comments regarding the fund's periodic or current reports or registration statement;<sup>472</sup>
- Form N-2 to require registered CEFs to provide MDFP in their annual reports;<sup>473</sup> and
- Form N-2 to require BDCs to include financial highlights in their annual reports on Form 10-K;<sup>474</sup> and
- Rule 8b-16 to require registered CEFs to describe certain changes in enough detail to allow investors to understand each change and how it may affect the fund.<sup>475</sup>

The collection of information burdens under the proposed amendments correspond to information collections

year = 14,048.26 burden hours per year. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>469</sup>  $807 \text{ affected funds} \times \$1,096.87 = \$885,174.09$ .

<sup>470</sup>  $807 \text{ affected funds} \times 1 \text{ hour} = 807 \text{ hours}$ .

<sup>471</sup> See *supra* Part II.H.2.

<sup>472</sup> See *supra* Part II.H.2.a; see also proposed Instruction 4.h(ii) to Item 24 of Form N-2 (fee and expense table); Proposed Instruction 4.h(iii) to Item 24 of Form N-2 (share price data); Proposed Instruction 4.h(i) to Item 24 of Form N-2 (senior securities table). In connection with this proposal, we are also proposing to eliminate the requirement that affected funds disclose the average commission rate paid in their financial highlights disclosure.

<sup>473</sup> See *supra* Part II.H.2.b; see also proposed Instruction 4.g to Item 24 of Form N-2.

<sup>474</sup> See *supra* Part II.H.2.c; see also proposed revisions to Instruction 1 to Item 4 of Form N-2. As discussed above, BDCs also would be required to include financial highlights in their registration statements on Form N-2. See *supra* Part V.B.1.

<sup>475</sup> See *supra* Part II.H.5; see also proposed rule 8b-16(e).

under rule 30e-1 for registered CEFs and Form 10-K for BDCs. Rule 30e-1 generally requires registered investment companies to transmit to their shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. BDCs, like operating companies, are required to file annual reports on Form 10-K pursuant to section 13 or 15(d) of the Exchange Act. We currently estimate that it takes approximately 88 hours and costs \$31,061 per registered investment company to comply with the collection of information associated with rule 30e-1.<sup>476</sup> For Form 10-K, we currently estimate that it takes each operating company approximately 1,747 hours and costs approximately \$233,044 to comply with the collection of information associated with Form 10-K.<sup>477</sup>

We estimate that the proposed amendments to require affected funds filing a short-form registration statement to disclose fee and expense table, share price data, a senior securities table, and unresolved staff comments would incrementally increase the compliance burden on these funds. However, because current disclosure requirements of Form N-2 already require affected funds to disclose the fee and expense table, share price data, and a senior securities table—and because disclosure of unresolved staff comments would simply be a restatement of comments provided to these funds by the staff—we believe these disclosures should not impose significant new burdens. Accordingly, we estimate that the proposed amendments would incrementally increase the paperwork burden associated with rule 30e-1 and Form 10-K by 3 hours per affected fund that would be eligible to use the short-form registration statement.

Regarding the proposed amendments to require registered CEFs disclose in their annual reports MDFP and any material changes in their investment objectives or policies that have not been approved by shareholders, we believe these additional disclosures would increase the paperwork burden

associated with rule 30e-1 for registered CEFs. For example, MDFP requires, among other things, narrative disclosure about the factors that materially affected a fund's performance during its most recently completed fiscal year, as well as the impact on the fund and its shareholders of policies and practices that the fund may use to maintain a certain level of distributions. We estimate that the proposed amendment to require MDFP would incrementally increase the paperwork burden associated with rule 30e-1 by 16 hours and that the proposed amendment to require disclosure of any material changes in investment objectives or policies that were not approved by shareholders would incrementally increase the paperwork burden associated with rule 30e-1 by 4 hours.

Regarding the proposed amendments to require BDCs to disclose financial highlights information in their registration statements and annual reports, we estimate that this proposed amendment would incrementally increase in the paperwork burden associated with Form 10-K. As we noted above in our PRA analysis of this proposed amendment on Form N-2, BDCs currently provide this information. Accordingly, we estimate the proposed amendment would incrementally increase the paperwork burden associated with Form 10-K by 1.5 hours.

For purposes of the PRA, we estimate the proposed amendments would result in 284 hours of additional total incremental burden under Form 10-K<sup>478</sup> and 15,451 hours of total incremental burden under rule 30e-1.<sup>479</sup>

In connection with our estimate of the total incremental burden of the proposed amendments, we have allocated a portion of those burdens as costs. Based on consultations with operating companies, law firms, fund representatives and other persons who regularly assist funds in preparing and filing reports with the Commission, the staff estimates that 75% of the burden of preparing annual reports under rule 30e-1 and on Form 10-K is undertaken

by the fund internally and that 25% of the burden is undertaken by outside professionals, such as outside counsel and independent auditors, retained by the fund at an average cost of \$400 per hour.<sup>480</sup> Accordingly, we estimate for purposes of the PRA that the total incremental burden for Form 10-K under the proposed amendments would be 213 hours for internal time (284 total incremental burden hours  $\times$  0.75) and \$28,400 (284 total incremental burden hours  $\times$  0.25  $\times$  \$400) for the services of outside professionals. We further estimate for purposes of the PRA that the total incremental burden for rule 30e-1 would be 11,588 hours for internal time (15,451 total incremental burden hours  $\times$  0.75) and \$1,545,100 (15,451 total incremental burden hours  $\times$  0.25  $\times$  \$400) for the services of outside professionals.

#### 4. Securities Offering Communications

Rule 163 permits WKSIs to make unrestricted oral and written offers before filing a registration statement, but any written offer will be considered a free writing prospectus and will generally have to be filed upon filing a registration statement or amendment covering the securities. Rule 433 governs the use of free writing prospectuses by WKSIs and non-WKSI issuers after the filing of a registration statement. A free writing prospectus used by or on behalf of an affected fund, or free writing prospectuses that are broadly disseminated by another offering participant, are required to be filed with the Commission. We are proposing amendments to rules 163 and 433 that would permit affected funds to rely on these rules to use a free writing prospectus.

We calculated our burden estimate for the proposed amendments to rule 163 based on several assumptions. First, we assumed that the burden of filing a free writing prospectus by an affected fund would be the same 0.25 burden hours for filing the document as we estimate operating companies incur.<sup>481</sup> Second, we assumed that only a limited number of affected funds that would qualify as a WKSI would rely on rule 163 to use

<sup>476</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2016. The estimated aggregate annual hour and cost burden of rule 30e-1 is approximately 1,043,592 hours and \$368,352,399.

<sup>477</sup> These estimates are based on the last time the form's information collections were approved, pursuant to a submission for a PRA extension in 2018. The estimated aggregate annual hour and cost burden of Form 10-K is approximately 14,217,344 hours and \$1,896,280,869.

<sup>478</sup> For BDCs we calculated the total incremental burden as follows: (43 BDCs eligible to use the short-form registration statement  $\times$  3 hours = 129 hours) + (103 BDCs  $\times$  1.5 hours = 154.5 hours) = 283.5 burden hours. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>479</sup> For registered CEFs we calculated the total incremental burden as follows: (457 registered CEFs eligible to use the short-form registration statement  $\times$  3 hours = 1,371 hours) + (704 registered CEFs required to disclose MDFP and material changes in investment policies  $\times$  20 hours = 14,080 hours) = 15,451 burden hours.

<sup>480</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. This estimate is based on discussions the staff has had with several law and accounting firms to estimate an hourly rate of \$400 as the cost to operating companies and funds for the services of outside professionals retained to assist in the preparation of these filings.

<sup>481</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2017.

free writing prospectuses.<sup>482</sup> In connection with our estimate of the burden hours of the proposed amendment to rule 163, we have allocated a portion of those burdens as costs. We estimate that 25% of the burden of preparing and filing a free writing prospectus pursuant to rule 163 is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer at an average cost of \$400 per hour.<sup>483</sup> Accordingly, we estimate that for purposes of the PRA the total incremental burden for the proposed amendments to rule 163 would be approximately 0.125 hours<sup>484</sup> and \$150 for the services of outside professionals.<sup>485</sup>

With respect to the burdens of the proposed amendments to rule 433, we assumed that the burden of filing a free writing prospectus by an affected fund would be the same 1.28 burden hours for filing the document as we estimate operating companies incur.<sup>486</sup> Second, we assumed that an affected fund would, on average, file a similar number of free writing prospectuses under rule 433 per year that an operating company files on average annually.<sup>487</sup> For

purposes of the PRA, we estimate that affected funds would annually file approximately 4,360 free writing prospectuses under rule 433.<sup>488</sup> However, the extent to which affected funds would adopt the use of free writing prospectuses under the proposed amendments to rule 433 is uncertain. Affected funds' current communications under rule 482 of the Securities Act may be similar to free writing prospectuses that could be used in reliance on the proposed amendments to rule 433, and funds could continue to rely on rule 482 to engage in post-filing communications if the Commission were to adopt the proposed amendments to rule 433.<sup>489</sup>

Similar to our calculation of the burden estimates for rule 163, we have also allocated a portion of our burden estimates for rule 433 burdens as costs. We estimate that 25% of the burden of preparing and filing a free writing prospectus pursuant to rule 433 is undertaken by the issuer internally and that 75% of the burden is undertaken by outside professionals retained by the issuer at an average cost of \$400 per hour. For purposes of the PRA, we estimate that the annual paperwork burden for affected funds under the proposed amendments to rule 433 would be approximately 1,395 hours<sup>490</sup> of internal personnel time and a cost of approximately \$1,674,240 for the services of outside professionals.<sup>491</sup>

## 5. Prospectus Delivery Requirements

Rule 173 requires an issuer to, if applicable, provide a notice to

of approximately 5.4 free writing prospectuses per year.

<sup>488</sup> We calculated this estimate as follows: 5.4 free writing prospectuses × 807 affected funds = 4,360 free writing prospectuses (rounded to the nearest whole number).

<sup>489</sup> We note here that certain communications that are currently treated as affected funds' rule 482 advertisements could fall under the rule 138 safe harbor for research reports, as proposed, or the free writing prospectus rules, rules 164 and 433, as proposed. *See supra* Parts IV.B.2 and IV.C.1. This could result in a reduction in the information collection burdens for rule 482 if fewer materials are filed. In connection with the extension of a currently approved collection for rule 482, the Commission will adjust the burdens associated with these collections of information to reflect these changes, as appropriate. At this time, we are requesting comments regarding the overall burden estimates for the proposed rules.

<sup>490</sup> We calculated this estimate as follows: (4,360 free writing prospectuses filed per year × 1.28 hours per response) × 0.25 allocation of time = 1,395 hours (rounded to the nearest whole number).

<sup>491</sup> We calculated this estimate as follows: (4,360 free writing prospectuses filed per year × 1.28 hours per response) × 0.75 allocation of time × \$400 = \$1,674,240 (rounded to the nearest whole number). This estimate includes the cost of outside counsel, filing agents and the services of other professionals retained to assist in the preparation and filing of the document.

purchasers stating that a sale of securities was made based on a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172.<sup>492</sup> We are proposing to amend this rule to make it applicable to affected funds.<sup>493</sup>

For purposes of the PRA, we estimate that the annual incremental paperwork burden for affected funds under the proposed amendments to rule 173 would be 586,865 burden hours.<sup>494</sup> In deriving our estimate, we assumed that: (1) There would be 807 affected funds that would become subject to rule 173 under the proposed amendments;<sup>495</sup> (2) each of these affected funds would incur the same 0.0167 average burden hours per response as we estimate operating companies subject to rule 173 do; and (3) each of these affected funds would provide, on average, 43,546 responses per year, as we estimate operating companies subject to rule 173 do.<sup>496</sup>

## 6. Proposed Form 8-K Reporting Requirements

We are proposing amendments to require registered CEFs to report information on Form 8-K.<sup>497</sup> We are also proposing to amend Form 8-K to add two new reporting items for affected funds, and to revise several existing reporting instructions to the form to tailor these requirements to affected funds.<sup>498</sup> Under the proposed new reporting items, an affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment.

First, we estimated the average number of Form 8-K filings an affected fund would make annually. Based on an analysis of Form 8-K filings over a three-year period from June 1, 2015 to May 31, 2018, the staff estimates that

<sup>492</sup> Rule 172 allows issuers, brokers, and dealers to satisfy final prospectus delivery obligations if a final prospectus is or will be on file with the Commission within the time required by the rules and other conditions are satisfied. Rule 173 requires a notice stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172.

<sup>493</sup> *See supra* Part II.D.

<sup>494</sup> 807 affected funds subject to rule 173 × 43,546 responses per affected fund × 0.0167 burden hours per response = approximately 586,865 burden hours per year. For convenience, the estimated burden has been rounded to the nearest whole number.

<sup>495</sup> *See supra* Part IV.A.1.

<sup>496</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2016.

<sup>497</sup> *See supra* Part II.H.3.

<sup>498</sup> *Id.*

<sup>482</sup> For a number of reasons, many issuers that are currently eligible to be WKSIs do not make use of free writing prospectuses in reliance on rule 163. At the time the Commission adopted rule 163, it estimated that 53 free writing prospectuses would be filed under rule 163 per year. However, during the Commission's 2017 fiscal year, only 10 free writing prospectuses in reliance on rule 163 were filed with the Commission. We estimate that 104 affected funds would be eligible to be WKSIs. If current practices regarding the use of free writing prospectus under rule 163 continue with respect to affected funds, we do not believe that these affected funds would significantly increase the number of free writing prospectuses under rule 163. Accordingly, we estimate that, on average, affected funds that are eligible to be WKSIs would file 2 free writing prospectuses under the proposed amendments to rule 163 each year.

<sup>483</sup> The staff estimates an hourly cost of \$400 per hour for the service of outside professionals based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing documents with the Commission.

<sup>484</sup> We calculated this estimate as follows: (2 free writing prospectuses filed per year × 0.25 hours per response) × 0.25 allocation of time = 0.125 hours.

<sup>485</sup> We calculated this estimate as follows: (2 free writing prospectuses filed per year × 0.25 hours per response) × 0.75 allocation of time × \$400 = \$150. This estimate includes the cost of outside counsel, filing agents and the services of other professionals retained to assist in the preparation and filing of the document.

<sup>486</sup> These estimates are based on the last time the rule's information collections were approved, pursuant to a submission for a PRA extension in 2017. The burden hours for preparing and filing a rule 433 free writing prospectus are greater than the burdens under rule 163 because certain conditions to the use of a free writing prospectus under rule 433 require the free writing prospectus to contain more information than rule 163 requires.

<sup>487</sup> The most recent data that we have available shows that each operating company files an average



BDCs file an average of 10 Form 8-Ks annually.<sup>499</sup> We assumed that registered CEFs would make, on average, the same number of Form 8-K filings per year. Further, we estimate that the proposed new Form 8-K reporting items for affected funds would, on average, result in affected funds filing one more report on Form 8-K per year. Accordingly, we estimate that registered CEFs would make, on average, 11 Form 8-K filings per year under the proposed amendments,<sup>500</sup> and BDCs would make, on average, 1 additional Form 8-K filing per year under the proposed amendments. Thus, we estimate an additional 7,744 filings by registered CEFs and an additional 103 filings by BDCs per year on Form 8-K under the proposed amendments, for an aggregate of 7,847 additional filings on Form 8-K.<sup>501</sup>

Second, we assumed that, on average, completing and filing a Form 8-K that would be required under the new disclosure items would require the same amount of time completing and filing a Form 8-K under many of the current disclosure items required by the form—approximately 5 hours.<sup>502</sup> However, because registered CEFs are not currently required to file Form 8-K reports, we adjusted the estimated average amount of time it would take a registered CEF to prepare and file a Form 8-K. We assumed that the first-year burden for registered CEFs would be greater than that for subsequent years, as a portion of the burdens will reflect one-time expenditures associated with complying with the new reporting requirements, such as implementing new processes for the preparation and collection of information, and training staff. We adjusted the second- and third-year estimates to account for the fact

that the preparation and collection process should become more routine.<sup>503</sup>

Under these assumptions, we estimate that the average amount of time it would take a registered CEF to prepare and file a Form 8-K would be 6.3125 hours per filing.<sup>504</sup>

For purposes of the PRA, we estimate the total annual incremental burden of our proposed amendments to Form 8-K is 48,884 hours for registered CEFs<sup>505</sup> and 515 burden hours for BDCs,<sup>506</sup> for a total of 49,399 burden hours.<sup>507</sup> For Form 8-K, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals, such as outside counsel, independent auditors and filing agents retained by the fund at an average cost of \$400 per hour. Thus, the annual incremental paperwork burden for registered CEFs to prepare and file Form 8-K under the proposed amendments would be approximately 36,663 burden hours of internal time and a cost of approximately \$4,888,400 for the services of outside professionals.<sup>508</sup> We estimate that the incremental paperwork burden for BDCs would be 386.25 hours of internal time and a cost of approximately \$51,500 for the services of outside professionals.<sup>509</sup> In total, we estimate that the incremental paperwork burden for all affected funds to prepare and file Form 8-K under the proposed amendments would be approximately 37,049.25 burden hours of internal time<sup>510</sup> and a

cost of approximately \$4,939,900 for the services of outside professionals.<sup>511</sup>

## 7. Form 24F-2

Rule 24f-2 requires any open-end management company, unit investment trust, or face-amount certificate company deemed to have registered an indefinite amount of securities to file a Form 24F-2 not later than 90 days after the end of any fiscal year in which it has publicly offered such securities. Form 24F-2 is the annual notice of securities sold by these funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year. We are proposing to amend rules 23c-3 and 24f-2 so that interval funds would pay registration fees on the same annual basis using Form 24F-2. We are also proposing to require funds to submit reports on Form 24F-2 in a structured data format.

The Commission has previously estimated that approximately 6,120 funds file Form 24F-2 annually.<sup>512</sup> The current estimated annual internal hour burden per fund of filing Form 24F-2 is two hours of clerical time, with an estimated total annual burden for all respondents of 12,240 hours. At an estimated wage rate of \$67 per hour, the annual cost per respondent of this burden is estimated at \$134, and the total annual cost for all respondents is \$820,080. We estimate that an additional 57 funds would file Form 24F-2 annually under the proposed amendments.<sup>513</sup> In addition, we estimate that the requirement to submit filings of Form 24F-2 in a structured data format would increase the annual internal hour burden by two hours per respondent. At an estimated wage rate of \$261 per programmer hour, we estimate that the annual cost per respondent of this additional burden is about \$522 per year.<sup>514</sup> Accordingly, we estimate that the annual internal hour burden to file Form 24F-2 under the proposed amendments would be about

time for BDCs = 37,049.25 burden hours of internal time for affected funds.

<sup>511</sup> \$4,888,400 for services of outside professionals for registered CEFs + \$51,500 for services of outside professionals for BDCs = \$4,939,900 for services of outside professionals for affected funds.

<sup>512</sup> This estimate is was previously submitted to OMB in connection with the renewal of approval for the collection of information required by Form 24F-2 in 2018.

<sup>513</sup> See *supra* Part IV.A.1 (estimating that there were 57 interval funds as of September 30, 2018).

<sup>514</sup> 2 hours additional burden per fund per year × \$261 per hour = \$522 per fund per year.

<sup>499</sup> See *supra* footnote 415.

<sup>500</sup> While registered CEFs are currently required to use Form 8-K to file notice of a blackout period under rule 104 of Regulation BTR, it is very rare for registered CEFs to trigger this existing reporting requirement. It is similarly rare for BDCs to file notice of a blackout period on Form 8-K. See *supra* footnote 247. Thus, we have allocated all of the estimated 11 annual Form 8-K filings by registered CEFs to the proposed amendments rather than existing regulatory requirements.

<sup>501</sup> 11 additional filings by a registered CEF × 704 registered CEFs = 7,744 filings by registered CEFs. 1 additional filing by a BDC × 103 BDCs = 103 filings by BDCs. 7,744 filings by registered CEFs + 103 filings by BDCs = 7,847 filings total. Our estimate of costs and paperwork burdens that registered CEFs could incur may be over-estimates. See *supra* footnote 341.

<sup>502</sup> This estimate is based on prior approved revisions to the Form 8-K collection requirement in connection with final Commission rules that adopted similar Form 8-K requirements.

<sup>503</sup> We increased the first-year estimate by an additional three hours to reflect these one-time expenditures. We assumed the estimated burden increase in the second and third years would decline by 75% from the immediately-preceding year, with an estimated burden increase of 0.75 hours in the second year (3 hours – (3 hours × 0.75)) and an estimated burden increase of 0.1875 hours in the third year (0.75 hours – (0.75 hours × 0.75)). As a result, we estimate a first-year burden of 8 hours, a second-year burden of 5.75 hours, and a third-year burden of 5.1875 hours.

<sup>504</sup> For registered CEFs we calculated this estimate as follows: (8 hours + 5.75 hours + 5.1875 hours)/3 = 6.3125 burden hours per filing.

<sup>505</sup> 7,744 filings by registered CEFs × 6.3125 burden hours = 48,884 total burden hours for registered CEFs.

<sup>506</sup> 103 filings by BDCs × 5 burden hours = 515 total burden hours for BDCs.

<sup>507</sup> 48,884 total burden hours for registered CEFs + 515 total burden hours for BDCs = 49,399 total burden hours for affected funds.

<sup>508</sup> 48,884 total burden hours for registered CEFs × 0.75 = 36,663 burden hours of internal time. 48,884 total burden hours for registered CEFs × 0.25 × \$400 = \$4,888,400 for services of outside professionals.

<sup>509</sup> 515 total burden hours for BDCs × 0.75 = 386.25 burden hours of internal time. 515 total burden hours for BDCs × 0.25 × \$400 = \$51,500 for services of outside professionals.

<sup>510</sup> 36,663 burden hours of internal time for registered CEFs + 386.25 burden hours of internal



24,708 hours,<sup>515</sup> at a corresponding internal cost of about \$4.1 million.<sup>516</sup>

### C. Request for Comments

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Consistent with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In addition to these general requests for comment, we also request comment specifically on the following issues:

- Our analysis relies upon certain assumptions, as discussed above. Do commenters agree with these assumptions, including assumptions about burdens in the initial year of compliance compared to subsequent years (for example, the estimated burden for a registered CEF to prepare and file Form 8-K in the initial and subsequent years of compliance under the proposed rules)?

- Are the current burden estimates associated with the requirement to submit financial statements and notes in an XBRL still accurate? Have the burdens of preparing this information changed over time, particularly for smaller reporting companies?

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and

should send a copy to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-03-19. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-03-19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

## VI. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with section 3 of the Regulatory Flexibility Act ("RFA").<sup>517</sup> It relates to proposed modifications to the registration, communications, and offering processes for affected funds under the Securities Act that would allow affected funds to use the securities offering rules that are already available to operating companies.

### A. Reasons for and Objectives of the Proposed Actions

The BDC Act directs us to allow a BDC to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act and specifically enumerates the required revisions. Similarly, the Registered CEF Act directs us to allow any listed registered CEF or interval fund to use the securities offering rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Exchange Act, subject to appropriate conditions.<sup>518</sup> Pursuant to both Acts, we are proposing rule and form amendments that would modify the registration, communications, and offering processes for affected funds to allow them to use the securities offering rules that are available to other issuers required to file reports under section 13(a) or section 15(d) of the Exchange Act. We are also proposing discretionary rule amendments to tailor the disclosure and regulatory framework for affected funds, in light of the proposed amendments to the offering rules applicable to them. The reasons for, and objectives of, the proposed rules are

further discussed in more detail in Part II above.

### B. Legal Basis

The Commission is proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly Sections 6, 7, 8, 10, 19, 27A, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly Sections 2, 3(b), 9(a), 10, 12, 13, 14, 15, 17(a), 21E, 23(a), 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly Sections 6(c), 8, 20(a), 23, 24, 29, 30, 31, 37, and 38 thereof [15 U.S.C. 80a *et seq.*]; the BDC Act, particularly Section 803(b) thereof [Pub. L. No. 115-141, title VIII]; and the Registered CEF Act, particularly Section 509(a) thereof [Pub. L. No. 115-174].

### C. Small Entities Subject to the Rule

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>519</sup> Commission staff estimates that, as of June 2018, 19 BDCs and 32 registered CEFs are small entities.<sup>520</sup>

A broker-dealer is a small entity if it has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d),<sup>521</sup> and it is not affiliated with any person (other than a natural person) that is not a small business or

<sup>519</sup> 17 CFR 270.0-10(a).

<sup>520</sup> These estimates, reflecting the net assets of registered CEFs and of BDCs, are based on staff review of Forms N-CEN and N-Q filed with the Commission as of June 2018 and are based on the definition of small entity under rule 0-10 of the Investment Company Act [17 CFR 270.0-10]. Such funds would not necessarily be able to meet the transaction requirement to qualify to file a short-form registration statement on Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million) or to be a WKSI (*i.e.*, generally those affected funds with a public float of \$700 million). See *supra* Part II.B.2.a and II.C.

Based on data from Morningstar Direct as of June 2018, of the 19 BDCs that are small entities, 3 were traded on an exchange with market capitalization below the \$75 million public float threshold for qualifying to file a short-form registration statement on Form N-2. Likewise, of the 32 registered CEFs that qualified as small entities, 3 traded on an exchange with market capitalizations below this same \$75 million threshold; while 2 were traded on the over-the-counter (OTC) market with market capitalizations below \$75 million.

<sup>521</sup> See rule 0-10(c)(1) under the Exchange Act [17 CFR 240.0-10(c)(1)]. Alternatively, if a broker-dealer is "not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter)." See *id.*

<sup>515</sup> (2 hours current burden per fund per year + 2 hours for structured data format per fund per year) × (6,120 current funds + 57 interval funds) = 4 burden hours per fund per year × 6,177 funds = 24,708 hours per year.

<sup>516</sup> ((2 hours current burden per fund per year × \$67 per hour) + (2 hours for structured data format per fund per year × \$261 per hour)) × 6,177 funds = (\$134 per fund per year + \$522 per fund per year) × 6,177 funds = \$656 per fund per year × 6,177 funds = \$4,052,112 per year.

<sup>517</sup> 5 U.S.C. 603.

<sup>518</sup> As discussed above, we propose to apply the proposed rules to all registered CEFs (and BDCs), which certain conditions and exceptions.

small organization.<sup>522</sup> Commission staff estimates that, as of December 31, 2018, there are approximately 996 broker-dealers that may be considered small entities.<sup>523</sup> To the extent a small broker-dealer participates in a securities offering or prepares research reports, it may be affected by our proposals. Generally, we believe larger broker-dealers engage in these activities, but we request comment on whether and how these proposals would affect small broker-dealers.<sup>524</sup> We also request comment on the number of small entities that would be affected by our proposal, including any available empirical data.

#### *D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed amendments would create, amend, or eliminate current requirements for affected funds and broker-dealers, including those that are small entities discussed in Part VI.C above.<sup>525</sup>

##### **1. Registration Process and Final Prospectus Delivery**

The proposed amendments to the registration process for affected funds would create a short-form registration statement on Form N-2 that will function like a registration statement filed on Form S-3.<sup>526</sup> An affected fund eligible to file this short-form registration statement could use it to register shelf offerings, including shelf registration statements (filed by a WKSI) that become effective automatically.<sup>527</sup> Such a fund also could satisfy Form N-2's disclosure requirement by incorporating by reference information from the fund's Exchange Act reports.<sup>528</sup>

In addition, we are proposing amendments to allow certain affected funds eligible to register a primary offering under the proposed short-form registration instruction to rely on rule 430B to omit information from their base prospectuses, and to permit affected funds to use the process operating companies follow to file prospectus supplements.<sup>529</sup> Affected funds that choose to forward incorporate information by reference into their registration statements, as proposed, would also be able to include additional information in their periodic reports that is not required to be included in these reports in order to update their registration statements.<sup>530</sup> A fund would be able to include this additional information if the fund includes a statement in the report identifying information that it has included for this purpose.<sup>531</sup>

The proposed amendments to the WKSI definition in rule 405 would also permit affected funds to qualify for enhanced offering and communication benefits under our rules.<sup>532</sup> In order for an issuer to qualify as a WKSI, the issuer must meet the registrant requirements of Form S-3, *i.e.*, it must be "seasoned," and generally must have at least \$700 million in public float.<sup>533</sup> Qualifying as a WKSI would allow such funds to file a registration statement or amendment that becomes effective automatically in a broader variety of contexts than non-WKSIs, and to communicate at any time, including through a free writing prospectus, without violating the "gun-jumping" provisions of the Securities Act.<sup>534</sup>

Smaller affected funds would not be able to avail themselves of the aspects of the proposed rule amendments streamlining the registration process for affected funds or that make available the WKSI designation to affected funds. The proposed short-form registration instruction is designed to provide affected funds parity with operating companies by permitting them to use the instruction to register the same transactions that an operating company can register on Form S-3.<sup>535</sup> In order to qualify to use the short-form registration statement under Form N-2, General Instruction A.2 of Form N-2 generally requires an affected fund to meet the public float requirement of \$75 million under the transaction requirements for

Form S-3.<sup>536</sup> Likewise, the WKSI provision of rule 405 contains a public float requirement of \$700 million, as discussed above. Smaller funds would not generally meet the public float thresholds to file a short-form registration statement or qualify as a WKSI and therefore would not generally be subject to either of these proposals.<sup>537</sup> However, smaller affected funds may be affected by these proposed amendments in other ways. For example, smaller affected funds may be more likely to merge to obtain WKSI status, and could experience competitive disadvantages over larger funds that qualify as WKSIs or that file short-form registration statements on Form N-2.<sup>538</sup>

We are also proposing to apply the delivery method for operating company final prospectuses to affected funds. As a result, an affected fund would be allowed to satisfy its final prospectus delivery obligations by filing its final prospectus with the Commission.<sup>539</sup> These proposed requirements would apply to all affected funds, both large and small.<sup>540</sup>

##### **2. Communication Rules**

For smaller affected funds, we are not proposing any new restrictions on communications. As discussed above, the proposed amendments to Securities Act rules 134, 138, 139, 156, 163, 163A, 164, 168, 169, and 433 make available the use of certain types of communications that were previously not available with respect to affected funds.<sup>541</sup> Except as otherwise discussed below, we believe that there are no significant reporting, recordkeeping, or other compliance requirements associated with the proposed amendments. As such, except as otherwise discussed below, we believe that there are no attendant costs and administrative burdens for small

<sup>522</sup> See rule 0-10(c)(2) under the Exchange Act [17 CFR 240.0-10(c)(2)].

<sup>523</sup> This estimate is derived from an analysis of data for the period ending Dec. 31, 2018 obtained from Financial and Operational Combined Uniform Single (FOCUS) Reports that broker-dealers generally are required to file with the Commission and/or SROs pursuant to rule 17a-5 under the Exchange Act [17 CFR 240.17a-5].

<sup>524</sup> See Securities Offering Reform Adopting Release, *supra* footnote 5, at 44797. See also CIFRR Adopting Release, *supra* footnote 98, at 64219.

<sup>525</sup> See also *supra* Part V (discussing the skills necessary to perform the recordkeeping, reporting, and compliance requirements of the proposed rules and form amendments, including those to be performed internally by a fund, and those to be performed externally by professionals). The PRA provides for the hours, costs, and skill level associated with preparing disclosures, filing forms, and retaining records in compliance with our proposed rules. These skills would apply for compliance with the proposed rules by all funds, large and small, and Commission staff further estimates that small funds will incur approximately the same initial and ongoing costs as large funds.

<sup>526</sup> See *supra* Part II.B.2.a.

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> See *supra* Part II.B.2.b.

<sup>530</sup> See *supra* Part II.B.2.c.

<sup>531</sup> *Id.*

<sup>532</sup> See *supra* Part II.C.

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*

<sup>535</sup> See *supra* footnote 33 and accompanying and preceding text.

<sup>536</sup> See *supra* Parts II.B.2.a and IV.B.1; *supra* paragraph accompanying footnote 33

<sup>537</sup> See *supra* Part IV.B.1; see also *supra* footnote and accompanying text.

<sup>538</sup> See *supra* Part IV.B.1.

<sup>539</sup> See *supra* Part II.D.

<sup>540</sup> Affected funds using the new approach to prospectus delivery would be required to provide a notice to purchasers stating that a sale of securities was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of rule 172 under the Securities Act. See *supra* footnote 109 and accompanying text.

<sup>541</sup> See *supra* Parts II.E, IV.B.2, IV.C.1, and V.B.4. The proposed amendments to Securities Act rules 163 and 433 [17 CFR 230.163 and 230.433], regarding the use of a free writing prospectus, would create new recordkeeping, filing, and compliance requirements that are addressed further below.

affected funds associated with these proposed amendments.

In addition, the communication rules themselves do not create any new restrictions for small affected funds. Instead, small affected funds now may be able to take advantage of new communications options not previously afforded to them.<sup>542</sup> We also note that rule 163, and the proposed amendments thereto, apply only to WKSIs. Consequently, the proposed amendments to rule 163 would not produce any benefit, or create any burden, for small affected funds because they would likely never qualify as WKSIs, as discussed above.<sup>543</sup>

To the extent that an affected fund uses a free writing prospectus under the proposed rules, any affected fund—large or small—would incur the burden of the requirement to file a free writing prospectus, or retain a record of the free writing prospectus for three years if it was not filed with the Commission.<sup>544</sup> However, we believe that the burden here would be negligible. Affected funds currently use rule 482 of the Securities Act to engage in communications similar to those that would be permitted under the proposed amendments to rule 433, and these funds are required to file their rule 482 communication with either the Commission or, alternatively, with the Financial Industry Regulatory Authority (“FINRA”).<sup>545</sup> The burden associated with the filing requirements that the proposed amendments to rule 433 would entail therefore would not be meaningfully different than the burden associated with the filing requirement for rule 482 communications. Rule 433, as proposed, would also create a recordkeeping requirement. We do not

believe that this requirement would create any significant burden given that records of rule 482 communications must also be retained for a period that would generally exceed that required under rule 433.<sup>546</sup> In addition, the recordkeeping requirement would apply only to affected funds (both large and small) that elect to use rule 433, as proposed to be amended.

The proposal also would affect broker-dealers participating in a registered offering. Specifically, the proposed rules would affect: (1) Broker-dealers’ publication and distribution of research reports on affected funds; and (2) broker-dealers’ use of free writing prospectuses on affected funds.

The proposed amendments to rule 138 would affect both large and small broker-dealers. These proposed amendments would now permit broker-dealers to publish or distribute research reports with respect to a broader class of issuers and securities without this publication or distribution being deemed to constitute an offer that otherwise could be a non-conforming prospectus in violation of section 5 of the Securities Act.<sup>547</sup> Broker-dealers that once used rule 482 ads styled as research reports, and that instead would rely on rule 138 as proposed to be amended to publish or distribute similar communications, would no longer be subject to any filing requirement for these communications. Consequently, we expect that the proposed amendments to rule 138 could result in fewer rule 482 communications being filed with FINRA.<sup>548</sup> This in turn could reduce filing-related administrative costs for broker-dealers publishing or distributing research reports on affected funds under the proposed amendments to rule 138. However, large and small broker-dealers would not be affected

differently by the proposed amendments to rule 138.

In addition, the proposed free writing prospectus rule amendments would permit broker-dealers to engage in these communications on behalf of the affected fund issuer.<sup>549</sup> This would require broker-dealers, both large and small, to file the free writing prospectuses that they use with the Commission, or maintain records of any free writing prospectuses used if it was not filed with the Commission.<sup>550</sup> However, certain of these broker-dealers are already required to file communications made under rule 482.<sup>551</sup> Broker-dealers that once used rule 482 ads and instead will rely on proposed amended rule 433 to publish or distribute similar communications, would no longer be required to file these communications with FINRA. Consequently, the proposed amendments to rule 433 could result in fewer rule 482 communications being filed with FINRA and a potential increase in filings of free writing prospectuses by affected funds with the Commission.<sup>552</sup> However, those broker-dealers that have not previously used rule 482 to publish or distribute the types of communications that the proposed amendments to rule 433 would permit would newly be subject to both the filing and recordkeeping requirements of rule 433.

### 3. New Registration Fee Payment Method for Interval Funds

As discussed above, we are proposing a modernized approach to registration fee payment that would require interval funds to pay securities registration fees using the same method that mutual funds and ETFs use today.<sup>553</sup>

Interval funds, like other affected funds, are not currently permitted to

<sup>542</sup> See *supra* Parts I.I.E., IV.B.2., IV.C.1., and V.B.4. These include, for example, proposed amendments to rule 163A of the Securities Act, which provides a bright-line rule permitting communications more than 30 days before filing a registration statement, and proposed amendments to rule 169 of the Securities Act, which provides affected funds the ability to engage in regular factual business communications.

<sup>543</sup> See *supra* Part VI.D.1.

<sup>544</sup> See proposed rule 433(d) and (g) [17 CFR 230.433(d) and (g)] (Paragraph (d) of the rule provides for the various conditions and exclusions applicable to the general requirement of 433(d)(1) that an issuer or offering participant file its free writing prospectus. Paragraph (g) requires that if a free writing prospectus is not filed pursuant to paragraph (d) or (f) of rule 433, issuers and offering participants must retain all free writing prospectuses that have been used, for three years following the initial bona fide offering of the securities in question).

<sup>545</sup> See rule 482 Note To Paragraph (H) [17 CFR 230.482(h)] (Rule 482 requires that advertisements used in reliance on rule 482 are required to be filed in accordance with the requirements of rule 497, unless they are filed with FINRA). See *supra* footnote 544 and Parts IV.C and V.B.4.; see also rule 497(a) and (i) [17 CFR 230.497(a) and (i)].

<sup>546</sup> See rule 31a–2(a)(3) of the Investment Company Act [17 CFR 270.31a–2(a)(3)] (requiring every registered investment company to preserve for no less than six years from the end of the fiscal year last used, any advertisement, pamphlet, circular form letter, or other sales literature addressed to or intended for distribution to prospective investors). Securities Act rule 433(g) requires an issuer and offering participants to retain all free writing prospectuses that have been used, and that have not been filed pursuant to paragraphs (d) or (f) of the rule, for three years following the initial bona fide offering of the securities in question. However, for a broker or dealer utilizing a free writing prospectus, rule 433 defers to the recordkeeping requirements under rule 17a–4 of the Exchange Act [17 CFR 240.17a–4] (requiring sales literature to be retained for not less than three years).

<sup>547</sup> See proposed rule 138.

<sup>548</sup> See *supra* footnote 545 and FINRA rule 2210(c)(7)(F) (requiring a broker-dealer to file with FINRA an investment company prospectus published pursuant to Securities Act rule 482).

<sup>549</sup> See proposed rule 433(b) (Paragraph (b)(1) states that for WKSIs and seasoned issuers, both an issuer or offering participant may use a free writing prospectus, while paragraph (b)(2) states that for non-reporting and unseasoned issuers, any person participating in the offer or sale of the issuer’s securities may use a free writing prospectus. Although the term “offering participant” is not defined, paragraph (h)(3) of rule 433 gives some context to this term.).

<sup>550</sup> See *supra* footnote 544.

<sup>551</sup> See *supra* footnote 545.

<sup>552</sup> See Part IV.C.1 and V.B.4 (noting that we are unable to predict whether affected funds would engage in more communications with investors as a result of the proposed rules). To the extent affected funds or broker-dealers would use a free writing prospectus for communications that currently occur under rule 482, we would expect an increase in such filings of free writing prospectuses as well as an increase in the number of rule 138 research reports, as amended, and a decrease in the number of 482 ads filed with FINRA. See *supra* footnote 489.

<sup>553</sup> See *supra* Part II.G.

pay registration fees on this same annual “net” basis, and must pay the registration fee at the time of filing the registration statement.<sup>554</sup> However, we believe that interval funds would benefit from the ability to pay their registration fees in the same manner as mutual funds and ETFs, and that this approach is appropriate in light of interval funds’ operations.<sup>555</sup> We believe this proposal would benefit small interval funds and larger interval funds equally, as the proposal would make the registration fee payment process for all interval funds more efficient as discussed above.<sup>556</sup>

#### 4. Disclosure and Reporting Requirements

We are also proposing amendments to our rules and forms intended to tailor the disclosure and regulatory framework for affected funds in light of our proposed amendments to the offering rules applicable to them.<sup>557</sup> These proposed amendments include: Structured data requirements; new periodic and current reporting requirements; amendments to provide affected funds additional flexibility to incorporate information by reference; and proposed enhancements to the disclosures that registered CEFs make to investors when the funds are not updating their registration statements.<sup>558</sup>

#### Structured Data Requirements

We are proposing to require BDCs, like operating companies, to submit financial statement information using Inline XBRL format; to require that affected funds include structured cover page information in their registration statements on Form N-2 using Inline XBRL format; and to require that certain information required in an affected fund’s prospectus be tagged using Inline XBRL format;<sup>559</sup> and to require that filings on Form 24F-2 be submitted in XML format.<sup>560</sup> Large and small affected funds would both incur the burdens associated with these proposed structured data requirements.

Furthermore, as noted above, we recognize that some registrants affected by the proposed requirement, particularly filers with no Inline XBRL experience, likely would incur initial costs to acquire the necessary expertise and/or software as well as ongoing costs of tagging required information in Inline XBRL, and the incremental effect of any fixed costs, including ongoing fixed costs, of complying with the Inline XBRL requirement may be greater for smaller filers.<sup>561</sup> However, we believe that smaller affected funds in particular may benefit more from enhanced exposure to investors that could result from these proposed requirements.<sup>562</sup> If reporting the disclosures in a structured format increases the availability, or reduces the cost of collecting and analyzing, key information about affected funds, smaller affected funds may benefit from improved coverage by third-party information providers and data aggregators.

#### Periodic Reporting Requirements

We are also proposing to require registered CEFs to provide management’s discussion of fund performance (or “MDFP”) in their annual reports to shareholders, BDCs to provide financial highlights in their registration statements and annual reports, and affected funds filing a short-form registration statement on Form N-2 to disclose material unresolved staff comments.<sup>563</sup> These proposed requirements are intended to modernize and harmonize our periodic report disclosure requirements for affected funds with those applicable to operating companies and mutual funds and ETFs.

The proposed amendments to require registered CEFs to include an MDFP section in the annual report and for BDCs to provide financial highlights in their registration statement and annual reports would apply to all applicable affected funds, large and small. We do not believe it would be appropriate to treat large and small entities differently for purposes of the proposed MDFP requirement. We believe that this proposed requirement would benefit investors by helping them assess a fund’s performance over the prior year and complementing other information in the report, which may make the annual report disclosure more understandable as a whole.<sup>564</sup> This

investor protection benefit would be equally significant to investors in smaller affected funds as well as larger affected funds.<sup>565</sup>

We similarly believe that the informational benefit of BDCs’ proposed inclusion of the financial highlights in their registration statements should apply equally to investors in large and small BDCs, and therefore we believe this proposed disclosure requirement is appropriate for all BDCs. We also believe the costs associated with this proposed requirement should be minimal for both large and small BDCs, since we understand that it is general market practice for BDCs to include this information in their registration statements.<sup>566</sup>

Finally, with respect to the proposed requirement for affected funds that file a short form registration statement on Form N-2 to disclose material staff comments, this requirement would apply only to those entities that qualify for the short-form registration statement, which generally would not include smaller affected funds.<sup>567</sup>

#### New Current Reporting Requirements for Affected Funds

In order to improve information for investors and to provide parity with BDCs and operating companies, we are also proposing to require all registered CEFs that are reporting companies under section 13(a) or section 15(d) of the Exchange Act to report certain specified events and information on Form 8-K on a current basis, to provide investors and the market with timely information about these events.<sup>568</sup> We believe that the proposed reportable events occur infrequently and thus should not result in a significant burden on affected funds resulting from the proposed Form 8-K requirements.<sup>569</sup>

Additionally, certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements in the annual and semi-

<sup>554</sup> See *supra* Part II.H.2.b and II.H.2.c; see also *supra* Part V.B.3 (discussing the burden hours associated with complying with the proposed disclosure requirements for both small and large affected funds).

<sup>556</sup> *Id.*; see also *supra* Parts V.B.1 and V.B.3.

<sup>557</sup> See *supra* footnote 520.

<sup>558</sup> See *supra* Parts II.H.3.a. and IV.E.4; see also *supra* footnote 243.

<sup>559</sup> See *supra* Parts II.H.3.b and IV.E.4. We note in Part IV.E.4 *supra* that existing items on Form 8-K generally have not led to frequent reporting obligations for BDCs. In addition, we are proposing to extend the safe harbor for failure to report certain Form 8-K items to include the new proposed reporting items for affected funds, which would limit liability concerns and the potential impact on an affected fund’s ability to raise capital associated with failing to timely file a report under these items.

<sup>561</sup> See *supra* Part IV.E.2. But see *supra* footnote 398 (noting that since 2014, costs incurred utilizing XBRL have significantly reduced for smaller companies).

<sup>562</sup> *Id.*

<sup>563</sup> See *supra* Parts II.H.2.b, II.H.2.c, and II.H.2.d.

<sup>564</sup> See *supra* Part IV.E.3.

<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> *Id.*; see also Part IV.E.1.

<sup>557</sup> See *supra* Part II.H. Some of the proposed amendments reflect our consideration of the availability of information to investors, as required by the Registered CEF Act. Section 509(a) of the Registered CEF Act.

<sup>558</sup> See *supra* Parts II.H.1—II.H.5.

<sup>559</sup> See *supra* footnote 455 (noting that a seasoned fund filing a short-form registration statement on Form N-2 also would be required to tag information appearing in Exchange Act reports, such as those on Forms N-CSR, 10-K, or 8-K, if that information is required to be tagged in the fund’s prospectus).

<sup>560</sup> See *supra* Parts II.H.1 and IV.E.1.

annual reports for registered CEFs. We do not believe that requiring similar disclosure on Form 8-K and in a registered CEF's annual or semi-annual reports should result in significant burdens for registered CEFs (including small registered CEFs) since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in any shareholder reports that follow funds' issuance of reports on Form 8-K.<sup>570</sup>

We also propose to amend Form 8-K to add two new reporting items for affected funds and tailor the existing reporting instructions to affected funds.<sup>571</sup> The additional reporting items we propose are designed to recognize certain differences between events that are relevant to affected funds and those that are relevant to operating companies.<sup>572</sup> An affected fund would be required to file a report on Form 8-K if the fund has: (1) A material change to its investment objectives or policies; or (2) a material write-down in fair value of a significant investment. We believe it is appropriate to propose these new reporting items, which would apply to all affected funds, large and small, to better tailor Form 8-K disclosure to these types of investment companies.<sup>573</sup> We do not believe these new items would create a significant burden.<sup>574</sup> Form 8-K is meant to capture important events, many of which may occur at a low frequency and should not result in numerous, persistent reports on Form 8-K by affected funds.<sup>575</sup> These two events are designed to recognize certain events that are important to affected fund investors, regardless of the size of the affected fund, where current information about such events would be beneficial to investors and the market.<sup>576</sup>

#### Online Availability of Information Incorporated by Reference

We are also proposing to modernize Form N-2's requirements for backward incorporation by reference by all affected funds. Affected funds would no longer be required to deliver to new investors information that they have incorporated by reference.<sup>577</sup> Instead, we are proposing that these funds make the incorporated materials and corresponding prospectus and SAI readily available and accessible on a

website maintained by or for the fund and identified in the fund's prospectus or SAI.<sup>578</sup> We do not believe this requirement would generate significant compliance costs for affected funds because many funds currently post their annual and semi-annual reports and other fund information on their websites.<sup>579</sup> Nor do we think it would be appropriate to treat large and small entities differently for purposes of the proposed amendment. The proposed requirement would make the incorporated information, prospectus, and SAI more accessible to retail investors, who we believe may be more inclined to look at a fund's website for information than to search the EDGAR system.<sup>580</sup> The proposed rule would also increase the likelihood that fund investors view the information in their preferred format, and thereby increase their use of the information to make investment decisions.<sup>581</sup> We believe that these investor protection benefits should be available equally for investors in smaller and larger affected funds.

#### Proposed Enhancements to Certain Registered CEFs' Annual Report Disclosure

Finally, the proposed amendments to rule 8b-16 of the Investment Company Act would require funds relying on that rule to describe material changes in their annual reports in enough detail to allow investors to understand each change and how it may affect the fund.<sup>582</sup> The proposed amendments also would require funds to preface such disclosures with a legend.<sup>583</sup> The proposed amendments to rule 8b-16 would only affect that portion of registered CEFs that rely on rule 8b-16.<sup>584</sup> We do not think it would be appropriate to treat large and small entities differently for purposes of the proposed amendments to rule 8b-16, as this new requirement would allow investors in funds relying on the rule to more easily identify and understand key information about their investments.<sup>585</sup> We believe that this investor protection benefit should be available equally for investors in smaller and larger affected funds. In addition, the proposed new requirement would likely add only a

small incremental compliance burden because funds relying on rule 8b-16 are already required to disclose the enumerated changes.<sup>586</sup> The proposed amendments described in Part II.H above would apply to affected funds that are small entities as well as other affected funds unless noted otherwise.<sup>587</sup>

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

Except as otherwise discussed below, the Commission has not identified any federal rules that duplicate, overlap, or conflict with the proposed rules. Both the BDC Act and Registered CEF Act direct the Commission to allow BDCs and certain CEFs to take advantage of the offerings and communications rules under the Securities Act and Exchange Act to affected funds not previously available to them. Consequently, the rules provide an alternative to other procedures and processes currently available to affected funds.

As discussed in detail above, we are proposing to require funds filing a short-form registration statement on Form N-2 to include key information in their annual reports that they currently disclose in their prospectuses.<sup>588</sup> However, because the proposed requirement to include key information in annual reports applies to seasoned affected funds, there would be no impact on smaller affected funds.<sup>589</sup>

The proposed amendments requiring registered CEFs that are Exchange Act reporting companies under section 13(a) or section 15(d) of the Exchange Act to now file Form 8-K also could entail some potential for regulatory duplication.<sup>590</sup> For example, registered CEFs are generally required to provide the information required under Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K in their semi-annual or annual shareholder reports. Further, registered CEFs are required to provide in their semi-annual or annual shareholder reports certain information found in Item 5.07 of Form 8-K about matters submitted to a vote of shareholders. Although certain items in Form 8-K are substantively the same as or similar to existing disclosure requirements for registered CEFs, the existing requirements provide less

<sup>570</sup> See *id.*; see also *supra* footnote 257.

<sup>571</sup> See *supra* Parts II.H.3.b and IV.E.4.

<sup>572</sup> See *supra* Part II.H.3.b.

<sup>573</sup> See *supra* Parts II.H.3.b and IV.E.4.

<sup>574</sup> *Id.*

<sup>575</sup> *Id.*

<sup>576</sup> *Id.*

<sup>577</sup> See *supra* Parts II.H.4 and IV.E.5.

<sup>578</sup> *Id.*

<sup>579</sup> See Part IV.E.5.

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

<sup>582</sup> See *supra* Parts II.H.5 and IV.E.3.

<sup>583</sup> *Id.*

<sup>584</sup> See *supra* Part IV.E.3. Based on staff review of data derived from Morningstar Direct for the period ending December 31, 2018, approximately 489 traded CEFs currently rely on rule 8b-16. Of these, we estimate that 20 would be small issuers based on net assets of \$50 million or less.

<sup>585</sup> See Part IV.E.3.

<sup>586</sup> *Id.*

<sup>587</sup> See also *supra* Parts IV.E, V.B.1, V.B.2, V.B.3, and V.B.6 (discussing the economic impact, and the estimated compliance costs and burdens, of the proposed rule and form amendments described in Part II.H).

<sup>588</sup> See *supra* Part II.H.2.

<sup>589</sup> See *supra* footnotes 535-536 and accompanying paragraph.

<sup>590</sup> See *supra* Part II.H.3.a and footnote 243.

timely disclosure.<sup>591</sup> As proposed, the Form 8-K requirements would require registered CEFs to disclose certain items within 4 business days of the relevant event, while the existing regime calls for similar disclosure on an annual or semi-annual basis in shareholder reports.<sup>592</sup> We believe it would be appropriate to require registered CEFs to provide more timely and current disclosure on these matters on Form 8-K in order to ensure parity with the reporting requirements to which operating companies and BDCs are subject. We believe this approach should not result in significant burdens for registered CEFs (including small registered CEFs) since, absent significant changes, they should be able to use their Form 8-K disclosure to more efficiently prepare the corresponding disclosure in any shareholder reports that follow funds' issuance of reports on Form 8-K.<sup>593</sup>

We do not anticipate that the proposed Form 8-K requirements would increase the compliance costs of affected funds' existing disclosure requirements, and they may, to some extent, reallocate certain of affected funds' existing disclosure costs to preparing Form 8-K disclosure since affected funds may be able to use the Form 8-K disclosure to help prepare disclosure that they are currently required to provide in annual or other periodic reports. Moreover, we believe that continuing to require the relevant disclosure in shareholder reports may reduce potential disruptions to shareholders who are accustomed to finding certain information in these reports and should limit discrepancies between different types of funds' shareholder reports.

#### F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. Although the BDC Act and Registered CEF Act required certain amendments to our rules and forms, we could have, for example, made additional

modifications to the relevant provisions with respect to affected funds that are small entities. Alternatively, we also could have limited the scope to BDCs (as the BDC Act specified) and to interval funds and listed registered CEFs (as the Registered CEF Act specified), which would have excluded from the scope of the proposed rules certain small entities that are registered CEFs but that are not interval funds or listed registered CEFs.<sup>594</sup> Where our proposed amendments reflect an exercise of discretion, we considered the following alternatives for small entities in relation to our proposed amendments:

- Exempting affected funds that are small entities from the proposed disclosure, reporting, or recordkeeping requirements, to account for resources available to small entities;
- Establishing different compliance or reporting requirements or frequency to account for resources available to small entities;
- Clarifying, consolidating, or simplifying the compliance requirements under the amendments for small entities; and
- Using performance rather than design standards.

#### 1. Alternatives to Proposed Approach to Implementing Statutory Mandates

In accordance with the BDC Act and Registered CEF Act, we are proposing to modify the restrictions regarding offerings and communications permitted around the time of a Securities Act registered offering. The proposed flexibility would be greatest for larger and seasoned affected funds, but would also provide greater flexibility to all affected funds and broker-dealers, including small entities.

We considered modifying the public float standards in the WKSI definition or the short-form registration instruction by reducing the required level of public float or providing alternative eligibility criteria, such as net asset value of a certain size for funds whose shares are not traded on an exchange or through the use of "performance" rather than "design" standards.<sup>595</sup> These alternatives would have allowed more affected funds, potentially including small entities, to qualify as WSIs or file short-form registration statements. However, we believe that modifying the eligibility criteria in the WKSI definition or the short-form registration instruction could weaken the investor protection benefits provided by those criteria.

We also considered extending the proposed rules only to BDCs, listed registered CEFs, and interval funds.<sup>596</sup> However, excluding unlisted registered CEFs from the proposed rules could create unnecessary competitive disparities between unlisted registered CEFs (which would potentially include smaller funds) and unlisted BDCs and would not provide investors in unlisted registered CEFs with the benefits of the new investor protections we are proposing.<sup>597</sup>

#### 2. Alternative Approaches to Discretionary Choices

##### New Registration Fee Payment Method for Interval Funds

We considered, but are not proposing, allowing a wider range of affected funds, such as registered CEFs that are tender offer funds, to rely on rule 24f-2.<sup>598</sup> To the extent that this alternative would have brought in additional small affected funds, it could have extended the benefits of this fee payment method to additional small entities. However, we did not propose this alternative approach because interval funds have structural similarities to mutual funds and ETFs that other affected funds do not.<sup>599</sup>

##### Structured Data Requirements

As an alternative, we could have proposed requiring the Inline XBRL requirements only for a subset of affected funds—for example, affected funds that file short-form registration statements on Form N-2 or WSIs.<sup>600</sup> This would have lessened the burden associated with the proposed structured data requirements on smaller affected funds. However, a structured data program that captures only a subset of affected funds would reduce potential data quality benefits compared to mandatory Inline XBRL requirements for all affected funds.<sup>601</sup> This in turn would reduce data users' ability to meaningfully analyze, aggregate, and compare data.

However, we are proposing an extended compliance period for the proposed new XBRL reporting requirements for affected funds that would not be eligible to file a short-form registration statement. This extended compliance period—which would apply to affected funds that do not meet the transaction requirement to qualify to file a short-form registration statement on

<sup>591</sup> See *supra* footnote 257 and accompanying paragraph.

<sup>592</sup> *Id.*

<sup>593</sup> See *supra* footnote 257 and accompanying text; see also Part V.B.6 (estimating 704 registered CEFs as of September 2018, and assuming all would file Form 8-K). We estimate that there are 32 registered CEFs that are small entities (see *supra* footnote 520). The Staff further estimates that based on review of EDGAR filings as February 2019 of the 32 registered CEFs, 17 are dually registered under the Securities Act and Investment Company Act. Based on these estimates, these 17 registered CEFs would be required to file 8-Ks under our proposed amendments.

<sup>594</sup> See *supra* Part II.A.

<sup>595</sup> See *supra* Part II.C.

<sup>596</sup> See *supra* Part IV.D.

<sup>597</sup> *Id.*

<sup>598</sup> See *supra* Part IV.E.1.

<sup>599</sup> See *id.*

<sup>600</sup> See *supra* Part V.B.2.

<sup>601</sup> See *id.*

Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million), and which encompasses the small entities subject to the proposed rule discussed above—should enable small entities to defer the burden of additional cost associated with the proposed XBRL requirements and learn from affected funds that comply earlier.

#### Periodic Reporting Requirements and Online Availability of Information Incorporated by Reference

We also considered a partial or complete exemption from the proposed periodic reporting requirements, and for the proposed requirements to make information incorporated by reference available on a website, for small entities.<sup>602</sup> With respect to the periodic reporting requirements, small entities that are not affected funds currently follow the same requirements that large entities do when filing periodic reports, and we believe that establishing different reporting requirements or frequency for small entities that are affected funds would not be consistent with the Commission's goal of investor protection and industry oversight. For example, we could have proposed to require smaller affected funds to include in their annual reports less information from their registration statements. While requiring less information would reduce costs to smaller affected funds by reducing the amount of required annual report disclosure, it could also make it more difficult for investors in these funds to find important fund information. Similarly, we believe that the investor protection benefits associated with the other proposed periodic reporting requirements that apply to large and small affected funds—for example, the proposed MDFP requirement for registered CEFs and the proposed inclusion of BDCs' financial highlights in their registration statement—should apply equally to investors in large and small affected funds.<sup>603</sup> We also believe that the investor protection benefits stemming from the proposed requirement to make materials incorporated by reference available on a website should be available equally for investors in smaller and larger affected funds, and therefore this proposed rule applies equally to large and small affected funds.<sup>604</sup>

#### New Current Reporting Requirements for Affected Funds

With respect to our proposed amendments to current reports on Form

8-K, we do not believe that small affected fund issuers would have to report more frequently than other issuers. We therefore believe that different reporting requirements or timetables for small entities would interfere with achieving the primary goal of making information about important events promptly available to investors and the public securities markets.<sup>605</sup> Similarly, clarifying, simplifying or consolidating compliance or reporting requirements would potentially create different requirements for smaller funds as compared to larger ones. Such a framework would interfere with the Commission's objective to supply investors and the public securities markets with data that is easily retrievable for all issuers and to supply them with information about funds of all sizes, and their important events, in a timely and relevant manner.<sup>606</sup> We also do not believe such a framework would be consistent with the goal of investor protection.

However, we are proposing an extended compliance period for the proposed new current reporting requirements for affected funds that would not be eligible to file a short-form registration statement. This extended compliance period—which would apply to affected funds that do not meet the transaction requirement to qualify to file a short-form registration statement on Form N-2 (*i.e.*, generally those affected funds with a public float of \$75 million), and which encompasses the small entities subject to the proposed rule discussed above—should enable small entities to defer the burden of additional cost associated with the proposed 8-K requirements and learn from affected funds that comply earlier.

#### G. General Request for Comment

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed rules and guidelines, and whether the proposed rules and guidelines would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the proposed rules and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

### VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),<sup>607</sup> the Commission must advise OMB whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
  - A major increase in costs or prices for consumers or individual industries; or
  - Significant adverse effects on competition, investment, or innovation.
- We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:
- The potential effect on the U.S. economy on an annual basis;
  - Any potential increase in costs or prices for consumers or individual industries; and
  - Any potential effect on competition, investment, or innovation.

We request that commenters provide empirical data and other factual support for their views to the extent possible.

### VIII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, 27A, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly sections 2, 3(b), 9(a), 10, 12, 13, 14, 15, 17(a), 21E, 23(a), 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly sections 6(c), 8, 20(a), 23, 24, 29, 30, 31, 37, and 38 thereof [15 U.S.C. 80a *et seq.*]; the BDC Act, particularly section 803(b) thereof [Pub. L. 115–141, title VIII]; and the Registered CEF Act, particularly section 509(a) thereof [Pub. L. 115–174].

#### Text of Proposed Rules and Forms

##### List of Subjects

##### 17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

##### 17 CFR Part 230

Advertising, Confidential business information, Investment Companies, Reporting and recordkeeping requirements, Securities.

##### 17 CFR Part 232

Administrative practice and procedure, Confidential business

<sup>602</sup> See *supra* Part IV.E.3.

<sup>603</sup> See *supra* Part VI.D.4.

<sup>604</sup> See *id.*

<sup>605</sup> See *supra* Part IV.E.4.

<sup>606</sup> See *supra* Part IV.E.4.

<sup>607</sup> Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).



information, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 240**

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 243**

Reporting and recordkeeping requirements, Securities.

**17 CFR Part 249**

Brokers, Reporting and recordkeeping requirements, Securities

**17 CFR Part 270**

Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

**17 CFR Part 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

For reasons set forth in the preamble, we propose to amend Title 17, Chapter II of the *Code of Federal Regulations* as follows:

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

- 1. The authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

- 2. Amend § 229.601 by revising paragraph (b)(101)(i) introductory text and paragraph (b)(101)(ii)(A) to read as follows.

**§ 229.601 (Item 601) Exhibits.**

\* \* \* \* \*

(b) \* \* \*  
(101) \* \* \*

(i) *Required to be submitted.* Required to be submitted to the Commission in the manner provided by § 232.405 of this chapter if the registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), except that an Interactive Data File:

\* \* \* \* \*

(ii) \* \* \*

(A) Registrant is not registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); and

\* \* \* \* \*

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

- 3. The authority citation for part 230 is revised to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), sec. 803(b), Pub. L. 115-141, 132 Stat. 348 (2018), and sec. 509(a), Pub. L. 115-174, 132 Stat. 1296 (2018), unless otherwise noted.

\* \* \* \* \*

- 4. Amend § 230.134 by revising paragraph (g) to read as follows:

**§ 230.134 Communications not deemed a prospectus.**

\* \* \* \* \*

(g) This section does not apply to a communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

- 5. Amend § 230.138 by:

- a. Revising the text to the “*Instruction to paragraph (a)(1)*”; and  
■ b. Revising paragraph (a)(2)(i).

The revisions read as follows:

**§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.**

(a) \* \* \*

(1) \* \* \*

*Instruction to paragraph (a)(1):* If the issuer has filed a shelf registration statement under Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S-3, General Instruction I.C. of Form F-3 (§ 239.13 or § 239.33 of this chapter), or pursuant to General Instructions A.2 and B of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) with respect to multiple classes of securities, the conditions of paragraph (a)(1) of this section must be satisfied for the offering in which the broker or dealer is participating or will participate.

(2) The issuer as of the date of reliance on this section:

(i) (A) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10-K (§ 249.310 of this chapter), 10-Q

(§ 249.308a of this chapter), and 20-F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B) (1) Is a registered closed-end investment company; and

(2) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms N-CSR (§§ 249.331 and 274.128 of this chapter), N-Q (§§ 249.332 and 274.130 of this chapter), N-PORT (§ 274.150 of this chapter), and N-CEN (§§ 249.330 and 274.101 of this chapter) pursuant to section 30 of the Investment Company Act; or

\* \* \* \* \*

**§ 230.138 [Amended]**

- 6. Effective May 1, 2020, amend § 230.138 by removing “N-Q (§§ 249.332 and 274.130 of this chapter),” in paragraph (a)(2)(i)(B)(2).

- 7. Amend § 230.156 by adding paragraph (d) to read as follows:

**§ 230.156 Investment company sales literature.**

\* \* \* \* \*

(d) Nothing in this section may be construed to prevent a business development company or a registered closed-end investment company, from qualifying for an exemption under § 230.168 of this chapter or § 230.169 of this chapter.

- 8. Amend § 230.163 by:

- a. Adding “or” after the semicolon at the end of paragraph (b)(3)(i);  
■ b. Revising paragraph (b)(3)(ii); and  
■ c. Removing paragraph (b)(3)(iii).

The revision to read as follows:

**§ 230.163 Exemption from section 5(c) of the Act for certain communications by or on behalf of well-known seasoned issuers.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) Communications by an issuer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

- 9. Amend § 230.163A by revising paragraph (b)(4) to read as follows:

**§ 230.163A Exemption from section 5(c) of the Act for certain communications made by or on behalf of issuers more than 30 days before a registration statement is filed.**

\* \* \* \* \*

(b) \* \* \*

(4) Communications made by an issuer that is an investment company



registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

■ 10. Amend § 230.164 by revising paragraph (f) to read as follows:

**§ 230.164 Post-filing free writing prospectuses in connection with certain registered offerings.**

\* \* \* \* \*

(f) *Excluded issuers.* This section and Rule 433 are not available if the issuer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

\* \* \* \* \*

■ 11. Amend § 230.168 by revising paragraph (b)(1) introductory text, paragraph (b)(2) introductory text, and paragraph (d)(3) to read as follows:

**§ 230.168 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information and forward-looking information.**

\* \* \* \* \*

(b) \* \* \*

(1) *Factual business information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such factual business information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*):

\* \* \* \* \*

(2) *Forward-looking information* means some or all of the following information that is released or disseminated under the conditions in paragraph (d) of this section, including, without limitation, such forward-looking information contained in reports or other materials filed with, furnished to, or submitted to the Commission pursuant to the Securities Exchange Act of 1934 or pursuant to the Investment Company Act of 1940:

\* \* \* \* \*

(d) \* \* \*

(3) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 12. Amend § 230.169 by revising paragraph (d)(4) to read as follows:

**§ 230.169 Exemption from sections 2(a)(10) and 5(c) of the Act for certain communications of regularly released factual business information.**

\* \* \* \* \*

(d) \* \* \*

(4) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company.

■ 13. Amend § 230.172 by revising paragraph (d)(1) to read as follows, removing paragraph (d)(2); and redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(2) and (d)(3).

**§ 230.172 Delivery of prospectuses.**

\* \* \* \* \*

(d) \* \* \*

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) other than a registered closed-end investment company;

\* \* \* \* \*

■ 14. Amend § 230.173 by revising paragraph (f)(2) to read as follows, removing paragraph (f)(3) and redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(3) and (f)(4).

**§ 230.173 Notice of registration.**

\* \* \* \* \*

(f) \* \* \*

(2) Offering of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) other than a registered closed-end investment company;

\* \* \* \* \*

■ 15. Amend § 230.405 by:

■ a. Revising the definition of “Automatic shelf registration statement.”;

■ b. In the definition of “Ineligible user.”:

■ i. Revising paragraph (1)(i);

■ ii. In paragraph (1)(vii) removing the words “years; or” and adding in their place “years;”;

■ iii. In paragraph (1)(viii) removing “offering.” and adding in its place “offering; or”;

■ iv. Adding paragraph (1)(ix) to the definition of “Ineligible issuer.”;

■ c. Adding in alphabetical order the definition “Registered closed-end investment company.”;

■ d. Revising the introductory text of paragraph (1)(i), and paragraphs (1)(i)(B)(2), (1)(v), and (2)(iii) of the definition of “Well-known seasoned issuer.”;

The additions and revisions read as follows:

**§ 230.405 Definitions of terms.**

\* \* \* \* \*

*Automatic shelf registration statement.* The term *automatic shelf registration statement* means a registration statement filed on Form S–3, Form F–3, or Form N–2 (§ 239.13, § 239.33, or § 239.14 and § 274.11a–1 of this chapter) by a well-known seasoned issuer pursuant to General Instruction I.D. of Form S–3, General Instruction I.C. of Form F–3, or General Instruction B of Form N–2.

\* \* \* \* \*

*Ineligible issuer.*

(1) \* \* \*

(i) Any issuer that is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) that has not filed all reports and other materials required to be filed during the preceding 12 months (or for such shorter period that the issuer was required to file such reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 or section 30 of the Investment Company Act of 1940), other than reports on Form 8–K (§ 249.308 of this chapter) required solely pursuant to an item specified in General Instruction I.A.3(b) of Form S–3 (§ 239.13 of this chapter) or General Instruction A.2.a of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) (or in the case of an asset-backed issuer, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor (as such terms are defined in Item 1101 of Regulation AB (§ 229.1101 of this chapter) are or were at any time during the preceding 12 calendar months required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all reports and other material required to be filed for such period (or such shorter period that each such entity was required to file such reports), other than reports on Form 8–K required solely pursuant to an item specified in General Instruction I.A.2 of Form SF–3);

\* \* \* \* \*

(ix) In the case of an issuer that is a registered closed-end investment company or a business development company, within the past three years any person or entity that at the time was an investment adviser to the issuer, including any sub-adviser, was made the subject of any judicial or administrative decree or order arising

out of a governmental action that determines that the investment adviser aided or abetted or caused the issuer to have violated the anti-fraud provisions of the federal securities laws.

\* \* \* \* \*

*Registered closed-end investment company.* The term registered closed-end investment company means a closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act.

\* \* \* \* \*

*Well-known seasoned issuer.* \* \* \*

(1)(i) Meets all the registrant requirements of General Instruction I.A. of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or General Instructions A.2.a and A.2.b of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) and either:

\* \* \* \* \*

(B)(1) \* \* \*

(2) Will register only non-convertible securities, other than common equity, and full and unconditional guarantees permitted pursuant to paragraph (1)(ii) of this definition unless, at the determination date, the issuer also is eligible to register a primary offering of its securities relying on General Instruction I.B.1. of Form S-3 or Form F-3 or is eligible to register a primary offering described in General Instruction I.B.1. of Form S-3 relying on General Instruction A.2 of Form N-2.

\* \* \* \* \*

(v) Is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), other than a registered closed-end investment company.

(2) \* \* \*

(iii) In the event that the issuer has not filed a shelf registration statement or amended a shelf registration statement for purposes of complying with section 10(a)(3) of the Act for sixteen months, the time of filing of the issuer's most recent annual report on Form 10-K (§ 249.310 of this chapter), Form 20-F (§ 249.220f of this chapter), or Form N-CSR (§ 249.331 and § 274.128 of this chapter) (or if such report has not been filed by its due date, such due date).

\* \* \* \* \*

■ 16. Amend § 230.415 by revising paragraphs (a)(1)(x), (a)(1)(xi), and (a)(2) to read as follows:

**§ 230.415 Delayed or Continuous Offering and Sale of Securities.**

(a) \* \* \*

(1) \* \* \*

(x) Securities registered (or qualified to be registered) on Form S-3 or Form

F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

\* \* \* \* \*

(2) Securities in paragraph (a)(1)(viii) of this section and securities in paragraph (a)(1)(ix) of this section that are not registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

\* \* \* \* \*

■ 17. Amend § 230.418 by revising paragraph (a)(3) to read as follows:

**§ 230.418 Supplemental information.**

(a) \* \* \*

(3) Except in the case of a registrant eligible to use Form S-3 (§ 239.13 of this chapter) or Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) under General Instruction A.2 of that form, any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months for or by the registrant and any affiliate of the registrant or any principal underwriter, as defined in Rule 405 (§ 230.405), of the securities being registered except for:

\* \* \* \* \*

■ 18. Amend § 230.424 by revising paragraph (f) to read as follows:

**§ 230.424 Filing of prospectuses, number of copies.**

\* \* \* \* \*

(f) This rule shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940, other than a registered closed-end investment company. References to “form of prospectus” in paragraphs (a), (b), and

(c) of this section shall be deemed also to refer to the form of Statement of Additional Information.

\* \* \* \* \*

■ 19. Amend § 230.430B by:

■ a. Revising the introductory text to paragraph (b);

■ b. Revising paragraph (f)(4) introductory text and paragraph (f)(4)(ii); and

■ c. Revising paragraph (i).

The revisions read as follows:

**§ 230.430B Prospectus in a registration statement after effective date.**

\* \* \* \* \*

(b) A form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(i) by an issuer eligible to use Form S-3 or Form F-3 (§§ 239.13 or 239.33 of this chapter) for primary offerings pursuant to General Instruction I.B.1 of such forms, or an issuer eligible to register such a primary offering under General Instruction A.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), may omit the information specified in paragraph (a) of this section, and may also omit the identities of selling security holders and amounts of securities to be registered on their behalf if:

\* \* \* \* \*

(f) \* \* \*

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§ 229.512(a)(1)(ii) of this chapter) or Item 34.4.a(2) of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

\* \* \* \* \*

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K or Item 34.4.a(2) of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

\* \* \* \* \*

(i) Issuers relying on this section shall furnish the undertakings required by

Item 512(a) of Regulation S–K or Item 34.4 of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) as applicable.

■ 20. Amend § 230.433 by revising paragraphs (b)(1)(i), (b)(1)(iv), and (c)(1)(ii) to read as follows:

**§ 230.433 Conditions to permissible post-filing free writing prospectuses.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Offerings of securities registered on Form S–3 (§ 239.33 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter) or on Form N–2 (§ 239.14 and § 274.11a–1 of this chapter) pursuant to General Instruction A.2 with respect to the same transactions;

\* \* \* \* \*

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms or an issuer eligible to use General Instruction A.2 of Form N–2 to register a primary offering described in General Instruction I.B.1 of Form S–3.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Information contained in the issuer's periodic and current reports filed or furnished to the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference into the registration statement and not superseded or modified, or pursuant to section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29).

\* \* \* \* \*

■ 21. Amend § 230.462 by revising paragraph (f) to read as follows:

**§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.**

\* \* \* \* \*

(f) A post-effective amendment filed pursuant to paragraph (e) of this section for purposes of adding a new issuer and its securities as permitted by Rule 413(b) (§ 230.413(b)) that satisfies the requirements of Form S–3, Form F–3, or General Instruction A.2 of Form N–2 (§ 239.13, § 239.33, or § 239.14 and § 274.11a–1 of this chapter), as applicable, including the signatures required by Rule 402(e) (§ 230.402(e)), and contains a prospectus satisfying the requirements of Rule 430B (§ 230.430B),

shall become effective upon filing with the Commission.

■ 22. Amend § 230.497 by:

■ a. Removing from paragraphs (c) and (e) the text “Form N–2 (§§ 239.14 and 274.11a–1 of this chapter),”; and

■ b. Adding paragraph (l).

The addition to read as follows:

**§ 230.497 Filing of investment company prospectuses—number of copies.**

\* \* \* \* \*

(l) Except for an investment company advertisement deemed to be a section 10(b) prospectus pursuant to § 230.482 of this chapter, this section shall not apply with respect to prospectuses of a registered closed-end investment company, or a business development company.

**PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

■ 23. The authority citation for part 232 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 24. Amend § 232.405 by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a)(2);

■ c. Revising the introductory text of paragraph (a)(3)(i);

■ d. Revising paragraph (a)(3)(ii);

■ e. Revising paragraph (a)(4);

■ f. Revising the introductory text of paragraph (b)(1);

■ g. Revising paragraph (b)(2);

■ h. Adding new paragraph (b)(3); and

■ i. Revising the last sentence of “Note to § 232.405.”

The revisions and addition to read as follows:

**§ 232.405 Interactive Data File submissions.**

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), and General Instruction H.2 of Form N–2 (§§ 239.14 and

274.11a–1 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in the note to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) \* \* \*

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), or General Instruction H.2 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), as applicable;

(3) \* \* \*

(i) If the electronic filer is neither a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) nor a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

\* \* \* \* \*

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part

II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), or General Instruction H.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter).

(b)(1) *Content—categories of information presented.* If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

\* \* \* \* \*

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the risk/return summary information set forth in Items 2, 3, and 4 of Form N-1A (§§ 239.15A and 274.11A of this chapter).

(3) If the electronic filer is a closed-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), an Interactive Data File must consist only of a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from: (i) For a business development company, the information specified in paragraph (b)(1) of this section; (ii) all of the information provided by the electronic filer on the cover page of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) except the Calculation of Registration Fee table, and (iii) as applicable, Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a-d, 10.2.a-c, 10.2.e, 10.3, and 10.5 of Form N-2.

\* \* \* \* \*

*Note to § 232.405:* \* \* \* For an issuer that is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter) or General Instruction H.2 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 25. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

\* \* \* \* \*

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 26. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

■ 27. Amend § 240.13a-11 by revising paragraphs (b) and (c) to read as follows:

**§ 240.13a-11 Current reports on Form 8-K (§ 249.308 of this chapter).**

\* \* \* \* \*

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.13a-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30a-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is:

(1) Required to file notice of a blackout period pursuant to § 245.104 of this chapter;

(2) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting;

(3) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10); or

(4) A closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 6.03, 10.02, or 10.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b-5.

\* \* \* \* \*

■ 28. Amend § 240.14a-101 by revising paragraph E of Notes and paragraph (b)(1) of Item 13. Financial and other information. (See Notes D and E at the beginning of this Schedule.) to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

### Schedule 14A Information

*Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934*

\* \* \* \* \*

### Notes

\* \* \* \* \*

E. In Item 13 of this Schedule, the reference to “meets the requirement of Form S-3” or “meets the requirements of General Instruction A.2 of Form N-2” shall refer to a registrant who meets the following requirements:

(a) A registrant meets the requirements of Form S-3 if:

(1) The registrant meets the requirements of General Instruction I.A. of Form S-3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant meets the aggregate market value requirement of General Instruction I.B.1 of Form S-3; or

(ii) Action is to be taken as described in Items 11, 12, and 14 of this schedule which concerns non-convertible debt or preferred securities issued by a registrant meeting the requirements of General Instruction I.B.2. of Form S-3

(referenced in 17 CFR 239.13 of this chapter); or

(iii) The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S-3 is met.

(b) A registrant meets the requirements of General Instruction A.2 of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter) if the registrant meets the conditions included in such General Instruction, provided that General Instruction A.2.c of Form N-2 is subject to the same limitations described in paragraph (a)(2) of this Note E.

*Item 13. Financial and other information.* (See Notes D and E at the beginning of this Schedule.)

(b) \* \* \*

(1) S-3 registrants and certain N-2 registrants. If the registrant meets the requirements of Form S-3 or General Instruction A.2 of Form N-2 (see Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S-3 or General Instruction A.2 of Form N-2 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

■ 29. Amend § 240.15d-11 by revising paragraphs (b) and (c) to read as follows:

**§ 240.15d-11 Current reports on Form 8-K (§ 249.308 of this chapter).**

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.15d-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30a-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is:

(1) Required to file notice of a blackout period pursuant to § 245.104 of this chapter;

(2) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting;

(3) Required to file disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a

nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10); or

(4) A closed-end company, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(2)), that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(c) No failure to file a report on Form 8-K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), 6.03, 10.02, or 10.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b-5.

## PART 243—REGULATION FD

■ 30. The authority citation for part 243 continues to read as follows:

**Authority:** 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

■ 31. Amend § 243.103 by revising paragraph (a) to read as follows:

**§ 243.103 No effect on Exchange Act reporting status.**

(a) For purposes of Forms S-3 (17 CFR 239.13), S-8 (17 CFR 239.16b) and SF-3 (17 CFR 239.45) under the Securities Act, or Form N-2 (17 CFR 239.14 and 17 CFR 274.11a-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or where applicable, has made those filings in a timely manner; or

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 32. The authority for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

■ 33. Amend Form 8-K (referenced in § 249.308 of this chapter) by:

■ a. Revising the first sentence of B.1. of the “General Instructions” section;

■ b. Adding a new sentence to the end of paragraph B.3. of the “General Instructions” section;

■ c. Adding “or the Investment Company Act” after “Securities Act” in “General Instruction B.5.”;

■ d. Revising Instruction 4 of “Item 2.02 Results of Operations and Financial Conditions.”;

■ e. Revising Instruction 2 of “Item 3.02 Unregistered Sales of Equity Securities.”;

■ f. Adding new section 10 in the section titled “INFORMATION TO BE INCLUDED IN THE REPORT”.

The revisions read as follows:

**Note:** The text of Form 8-K does not, and these amendments will not, appear in the *Code of Federal Regulations*.

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 8-K

## CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

## GENERAL INSTRUCTIONS

B. \* \* \*

1. A report on this form is required to be filed or furnished, as applicable, upon the occurrence of any one or more of the events specified in the items in Sections 1-6 and 9-10 of this form.

3. \* \* \* For registered closed-end investment companies, the term *previously reported* has the same meaning as in Rule 8b-2 under the Investment Company Act (17 CFR 270.8b-2), provided that such previously reported information is public.

## INFORMATION TO BE INCLUDED IN THE REPORT

### Item 2.02 Results of Operations and Financial Condition.

#### Instructions.

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10-K (17 CFR 249.310) or, for registered closed-end investment companies, for reports to stockholders filed with the Commission

under Rule 30b2-1 of the Investment Company Act.

\* \* \* \* \*

### Item 3.02 Unregistered Sales of Equity Securities.

\* \* \* \* \*

#### Instructions.

\* \* \* \* \*

2. A smaller reporting company is defined under Item 10(f)(1) of Regulation S-K (17 CFR 229.10(f)(1)). For purposes of this Item, a “smaller reporting company” with respect to a closed-end investment company described in Section 10 of this form means an investment company identified in Rule 0-10 under the Investment Company Act.

\* \* \* \* \*

### Section 10—Closed-End Investment Companies

The Items in this Section 10 only apply to registered closed-end investment companies and to business development companies, as defined in Section 2(a)(48) of the Investment Company Act. Terms used in this Section 10 have the same meaning as in the Investment Company Act and the rules thereunder.

#### Item 10.01 Material Change to Investment Objectives or Policies

If the registrant’s investment adviser has determined to implement a material change to the registrant’s investment objectives or policies, and such change has not been, and will not be, submitted to shareholders for approval, the registrant must disclose:

(a) The date the investment adviser plans to implement the material change to the registrant’s investment objectives or policies; and

(b) a description of the material change to the registrant’s investment objectives or policies.

#### Instructions.

1. For purposes of this Item, investment objectives or policies means the information specified in Item 8.2 of Form N-2. A registrant’s investment adviser includes any sub-advisers.

2. A registrant’s investment adviser has determined to implement a material change if the change would represent a new or different principal portfolio emphasis, including the types of securities in which the registrant invests or will invest or the significant investment practices or techniques that the registrant employs or intends to employ, from that most recently disclosed in the later of the registrant’s prospectus or most recent periodic report. In the case of a business

development company, the most recent periodic report is the most recently filed report on Form 10-Q or Form 10-K. In the case of a registered closed-end investment company, the most recent periodic report is the most recent report to stockholders filed with the Commission under Rule 30b2-1 under the Investment Company Act.

3. No report is required under this Item if the registrant provides substantially the same information in a post-effective amendment to its Securities Act registration statement or in a subsequent prospectus filed under Securities Act Rule 424 (17 CFR 230.424).

#### Item 10.02 Material Write-Downs

If the registrant concludes, in accordance with its valuation procedures, that a material write-down in fair value of a significant investment is required under generally accepted accounting principles applicable to the registrant, disclose the following information:

(a) The date of the conclusion that a material write-down in fair value is required; and

(b) the registrant’s estimate of the amount or range of amounts of the material write down; *provided, however*, that if the registrant determines that at the time of filing it is unable in good faith to make a determination of such estimate, no disclosure of such estimate shall be required; *provided further, however*, that in any such event, the registrant shall file an amended report on Form 8-K under this Item 10.02 within four business days after it makes a determination of such an estimate or range of estimates.

#### Instructions.

1. An investment is deemed to be a significant investment for purposes of this Item if the registrant’s and its other subsidiaries’ investments in a portfolio holding exceed 10% of the total assets of the registrant and its consolidated subsidiaries. Investments in the same issuer must be aggregated for purposes of determining whether the registrant and its subsidiaries have a portfolio holding that is a significant investment. The determination of whether a portfolio holding is a significant investment is based on the valuation of the portfolio holding prior to the material write-down.

2. No filing is required under this Item 10.02 if the conclusion is made in connection with the preparation, review, or audit of financial statements required to be included in the next periodic report due to be filed under the Exchange Act, the periodic report is

filed on a timely basis, and such conclusion is disclosed in the report.

\* \* \* \* \*

### PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 34. The authority citation for part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

\* \* \* \* \*

■ 35. Amend § 270.8b-16 by adding paragraph (e) to read as follows:

#### § 270.8b-16 Amendments to registration statement.

\* \* \* \* \*

(e) The changes required to be disclosed by paragraphs (b)(2) through (b)(5) of this section must be described in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with the following legend: “The following information [in this annual report] is a summary of certain changes since [date]. This information may not reflect all of the changes that have occurred since you purchased [this fund].”

■ 36. Amend § 270.23c-3 by adding paragraph (e) to read as follows:

#### § 270.23c-3 Repurchase offers by closed-end companies.

\* \* \* \* \*

(e) *Registration of an indefinite amount of securities.* A company that makes repurchase offers pursuant to paragraph (b) of this section shall be deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a-24(f)) upon the effective date of its registration statement.

■ 37. Amend § 270.24f-2 by revising the first sentence of paragraph (a) to read as follows:

#### § 270.24f-2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c-3(b) of this chapter, or unit investment trust (“issuer”) that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a-24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file

Form 24F-2 (17 CFR 274.24) with the Commission. \* \* \*

\* \* \* \* \*

# **PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

■ 38. The authority citation for part 274 is revised to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), and sec. 803(b), Pub. L. 115-141, 132 Stat. 348 (2018), unless otherwise noted.

\* \* \* \* \*

■ 39. Revise Form N-2 (referenced in §§ 239.14 and 274.11a-1 of this chapter) to read as follows:

**Note:** The text of Form N-2 does not, and this amendment will not, appear in the *Code of Federal Regulations*.

UNITED STATES  
SECURITIES AND EXCHANGE  
COMMISSION

Washington, DC 20549

## **FORM N-2**

### **Check appropriate box or boxes**

☐ REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF  
1933

☐ Pre-Effective Amendment No. \_\_\_\_\_

☐ Post-Effective Amendment No. \_\_\_\_\_

### **and/or**

☐ REGISTRATION STATEMENT  
UNDER THE INVESTMENT  
COMPANY ACT OF 1940

☐ Amendment No. \_\_\_\_\_

\_\_\_\_\_  
Registrant Exact Name as Specified in  
Charter

\_\_\_\_\_  
Address of Principal Executive Offices  
(Number, Street, City, State, Zip Code)

\_\_\_\_\_  
Registrant's Telephone Number,  
including Area Code

\_\_\_\_\_  
Name and Address (Number, Street,  
City, State, Zip Code) of Agent for  
Service

\_\_\_\_\_  
Approximate Date of Commencement of  
Proposed Public Offering

☐ Check box if the only securities  
being registered on this Form are  
being offered pursuant to dividend  
or interest reinvestment plans.

☐ Check box if any securities being  
registered on this Form will be  
offered on a delayed or continuous  
basis in reliance on Rule 415 under  
the Securities Act of 1933  
("Securities Act"), other than  
securities offered in connection  
with a dividend reinvestment plan.

☐ Check box if this Form is a  
registration statement pursuant to  
General Instruction A.2 or a post-  
effective amendment thereto.

☐ Check box if this Form is a  
registration statement pursuant to  
General Instruction B or a post-  
effective amendment thereto that  
will become effective upon filing  
with the Commission pursuant to  
Rule 462(e) under the Securities  
Act.

☐ Check box if this Form is a post-  
effective amendment to a  
registration statement filed  
pursuant to General Instruction B  
filed to register additional securities  
or additional classes of securities  
pursuant to Rule 413(b) under the  
Securities Act.

### **It is proposed that this filing will become effective (check appropriate box)**

☐ when declared effective pursuant to  
Section 8(c) of the Securities Act

*The following boxes should only be  
included and completed if the registrant  
is a registered closed-end management  
investment company or business  
development company which makes  
periodic repurchase offers under Rule  
23c-3 under the Investment Company  
Act of 1940 ("Investment Company  
Act") and is making this filing in  
accordance with Rule 486 under the  
Securities Act.*

☐ immediately upon filing pursuant to  
paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to  
paragraph (a)

☐ on (date) pursuant to paragraph (a)

### **If appropriate, check the following box:**

☐ This [post-effective] amendment  
designates a new effective date for  
a previously filed [post-effective

amendment] [registration  
statement].

☐ This Form is filed to register  
additional securities for an offering  
pursuant to Rule 462(b) under the  
Securities Act, and the Securities  
Act registration statement number  
of the earlier effective registration  
statement for the same offering is: \_\_\_\_\_

☐ This Form is a post-effective  
amendment filed pursuant to Rule  
462(c) under the Securities Act, and  
the Securities Act registration  
statement number of the earlier  
effective registration statement for  
the same offering is: \_\_\_\_\_

☐ This Form is a post-effective  
amendment filed pursuant to Rule  
462(d) under the Securities Act, and  
the Securities Act registration  
statement number of the earlier  
effective registration statement for  
the same offering is: \_\_\_\_\_

### **Check each box that appropriately characterizes the Fund:**

☐ Registered Closed-End Fund  
(closed-end company that is  
registered under the Investment  
Company Act).

☐ Business Development Company  
(closed-end company that intends  
or has elected to be regulated as a  
business development company  
under the Investment Company  
Act).

☐ Interval Fund (Registered Closed-  
End Fund or a Business  
Development Company that makes  
periodic repurchase offers under  
Rule 23c-3 under the Investment  
Company Act).

☐ A.2 Qualified (qualified to register  
securities pursuant to General  
Instruction A.2 of this Form).

☐ Well-Known Seasoned Issuer (as  
defined by Rule 405 under the  
Securities Act).

☐ Emerging Growth Company (as  
defined by Rule 12b-2 under the  
Securities Exchange Act of 1934  
("Exchange Act").

☐ New Registrant (registered or  
regulated under the Investment  
Company Act for less than 12  
calendar months preceding this  
filing).

## **CALCULATION OF REGISTRATION FEE UNDER THE SECURITIES ACT OF 1933**

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee



**Instructions.**

If the registration statement or amendment is filed under only one of the Acts, omit reference to the other Act from the facing sheet. Include the "Approximate Date of Commencement of Proposed Public Offering" and the table showing the calculation of the registration fee only where shares are being registered under the Securities Act.

If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities, and the amount of registration fee need to appear in the Calculation of Registration Fee table.

If the filing fee is calculated pursuant to Rule 457(r) under the Securities Act, the Calculation of Registration Fee table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the Fund is relying on Rule 456(b) and Rule 457(r). If the Calculation of Registration Fee table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii), the table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

Fill in the 811—, 814— and 33— blanks only if these filing numbers (for the Investment Company Act registration and/or the Securities Act registration, respectively) have already been assigned by the Securities and Exchange Commission.

Form N-2 is to be used by closed-end management investment companies, except small business investment companies licensed as such by the United States Small Business Administration, to register under the Investment Company Act and to offer their shares under the Securities Act. The Commission has designed Form N-2 to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N-2 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N-2,

and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-2 unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

*Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.*

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**Signatures****General Instructions****A. Use of Form N-2**

1. *General.* Form N-2 is used by all closed-end management investment companies ("Registrant" or "Fund"), except small business investment companies licensed as such by the United States Small Business Administration, to file: (1) An initial registration statement under Section 8(b) of the Investment Company Act and any amendments to the registration statement, including amendments required by Rule 8b-16 under the Investment Company Act; (2) a registration statement under the Securities Act and any amendment to it; or (3) any combination of these filings.

2. *Optional Use of Form for Certain Funds.* A Fund may elect to file a registration statement pursuant to this General Instruction A.2, including a registration statement used in connection with an offering pursuant to Rule 415(a)(1)(x) under the Securities Act, if it meets all of the following requirements:

a. The Fund meets the requirements of General Instruction I.A. of Form S-3, provided that failing to timely file a report required solely pursuant to Items 10.01 or 10.02 of Form 8-K will not affect the Fund's ability to meet the terms of General Instruction I.A.3(b) of Form S-3;

b. if the Fund is registered under the Investment Company Act, it has been registered for a period of at least twelve



calendar months immediately preceding the filing of the registration statement on this Form, and has timely filed all reports required to be filed pursuant to Section 30 of the Investment Company Act during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement; and

c. the registration statement to be filed pursuant to this General Instruction A.2 relates to a transaction specified in General Instruction I.B. or I.C of Form S-3, as applicable, and meets all of the conditions to the transaction specified in the applicable instruction.

A registration statement filed pursuant to this instruction shall specifically incorporate by reference into the prospectus and statement of additional information ("SAI") all of the materials specified in General Instruction F.3, pursuant to the requirements set forth in that instruction.

A Fund must indicate that the registration statement is being filed pursuant to this instruction by checking the appropriate box on the facing sheet.

**Note to General Instruction A.2.** Attention is directed to the General Instructions of Form S-3, including General Instructions II.D, F, and G, which contain general information regarding the preparation and filing of automatic and non-automatic shelf registration statements.

## B. Automatic Shelf Offerings by Well-Known Seasoned Issuers

Any Fund that is a Well-Known Seasoned Issuer as defined in Rule 405 of the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition may use a registration statement filed under General Instruction A.2 of this Form as an automatic shelf registration statement for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) of the Securities Act, only for the transactions that are described in, and consistent with the requirements of, General Instruction I.D. of Form S-3.

**Note to General Instruction B.** Attention is directed to the General Instructions of Form S-3, including General Instructions II.E, F, G and IV.B, which contain general information regarding the preparation and filing of automatic shelf registration statements.

## C. Registration Fees

Section 6(b) of the Securities Act and Rule 457 thereunder set forth the fee requirements under the Securities Act.

## D. Application of General Rules and Regulations

If the registration statement is being filed under both the Securities and Investment Company Acts or under only the Securities Act, the General Rules and Regulations under the Securities Act, particularly Regulation C [17 CFR 230.400 through 497], shall apply. If the registration statement is being filed under only the Investment Company Act, the General Rules and Regulations under the Investment Company Act, particularly those under Section 8(b) [17 CFR 270.8b-1 *et seq.*], shall apply.

## E. Amendments

1. Paragraph (a) of Rule 8b-16 under the Investment Company Act requires closed-end management investment companies to annually amend the Investment Company Act registration statement. Paragraph (b) of Rule 8b-16 exempts a closed-end management investment company from this requirement if it provides certain information specified by that rule to shareholders in its annual report.

2. If Form N-2 is used to file a registration statement under both the Securities and Investment Company Acts, any amendment of that registration statement shall be deemed to be filed under both Acts unless otherwise indicated on the facing sheet.

3. Funds offering securities on a delayed or continuous basis in reliance upon Rule 415 under the Securities Act must provide the undertakings with respect to post-effective amendments required by Item 34 of Form N-2.

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of a Fund which makes periodic repurchase offers pursuant to Rule 23c-3 under the Investment Company Act may become effective automatically in accordance with Rule 486 under the Securities Act. In accordance with Rule 429 under the Securities Act, a Fund filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Securities Act and Rule 457 under

the Securities Act shall be paid with respect to the additional shares only.

## F. Incorporation by Reference

1. *General Requirements.* Incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 411 under the Securities Act (general rules on incorporation by reference into a prospectus); Rule 303 of Regulation S-T (specific requirements for electronically filed documents); and Rules 0-4, 8b-23, 8b-24 and 8b-32 under the Investment Company Act (additional rules on incorporation by reference for Funds).

2. *Specific Requirements for Incorporation by Reference for Funds Not Relying on General Instruction A.2.*

a. A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of this Form or paragraph F.2.d below.

b. A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

c. A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

d. A Fund may incorporate by reference into the prospectus or the SAI in response to Items 4.1 or 24 of this Form the information contained in Form N-CSR or any report to shareholders meeting the requirements of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder (and a Fund that has elected to be regulated as a business development company may so incorporate into Items 4.1, 4.2, 8.6.c, or 24 of this Form the information contained in its annual report under the Exchange Act), provided:

(1) the material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form; and

(2) the Fund states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 24 of this Form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N-CSR or an annual report on Form 10-K. (The Fund also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 25.1) those portions of the report to shareholders or report on Form N-CSR or Form 10-K that are not

incorporated by reference and are not a part of the registration statement.)

3. *Specific Requirements for Incorporation by Reference for Certain Funds.* If a Fund is filing a registration statement pursuant to General Instruction A.2, the following requirements apply:

a. *Backward Incorporation by Reference.* The documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus and SAI by means of a statement to that effect in the prospectus and SAI listing all such documents:

(1) The Fund's latest annual report filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act that contains financial statements for the fund's latest fiscal year for which a Form N-CSR or Form 10-K was required to be filed;

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above; and

(3) if capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

b. *Forward Incorporation by Reference.* The prospectus and SAI shall also state that all documents subsequently filed by the Fund pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus and SAI.

c. *Use of Information to be Incorporated.* Any information required in the prospectus and SAI in response to Items 3–13 and Items 16–24 of this Form may be included in the prospectus and SAI through documents filed pursuant to Sections 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by reference into the prospectus and SAI that are part of the registration statement.

*Instruction.* Attention is directed to Rule 439 under the Securities Act regarding consent to use of material incorporated by reference.

#### 4. *Disclosure.*

a. The Fund must make its prospectus, SAI, and any periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference readily available and accessible on a website maintained by or for the Fund

and containing information about the Fund.

b. The Fund must state in its prospectus and SAI:

(1) That it will provide to each person, including any beneficial owner, to whom a prospectus or SAI is delivered, a copy of any or all information that has been incorporated by reference into the prospectus or SAI but not delivered with the prospectus or SAI;

(2) that it will provide this information upon written or oral request;

(3) that it will provide this information at no charge;

(4) the name, address, telephone number, and email address, if any, to which the request for this information must be made; and

(5) the Fund's website address where the prospectus, SAI, and any incorporated information may be accessed.

*Instruction.* If the Fund sends any of the information that is incorporated by reference into the prospectus or SAI to security holders, it also must send any exhibits that are specifically incorporated by reference into that information.

c. The Fund also must:

(1) Identify the reports and other information that it files with the SEC; and

(2) state that the SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

### G. Documents Comprising the Registration Statement or Amendment

1. A registration statement or an amendment to it filed under both the Securities and Investment Company Acts consists of the facing sheet of the Form, Part A, Part B, Part C, required signatures, all other documents filed as a part of the registration statement, and documents or information permitted to be incorporated by reference.

2. A registration statement or amendment to it that is filed under only the Securities Act shall contain all the information and documents specified in paragraph 1 of this Instruction G.

3. A registration statement or an amendment to it that is filed under only the Investment Company Act shall consist of the facing sheet of the Form, responses to all items of Parts A and B except Items 1, 2, 3.2, 4, 5, 6, and 7 of Part A, responses to all items of Part C except Items 25.2.h, 25.2.i, 25.2.n, and 25.2.o, required signatures, and all other documents that are required or which

the Fund may file as part of the registration statement.

### H. Preparation of the Registration Statement or Amendment

1. The following instructions for completing Form N-2 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the SAI that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

#### 2. *Interactive Data Files.*

a. An Interactive Data File as defined in Rule 11 of Regulation S-T is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any registration statement or post-effective amendment thereto on Form N-2 containing the cover page information specified in Rule 405 of Regulation S-T. The Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which it relates that is submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.

b. An Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any form of prospectus filed pursuant to Rule 424 under the Securities Act that includes information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5 that varies from the registration statement. The Interactive Data File must be submitted with the filing made pursuant to Rule 424.

c. If a Fund is filing a registration statement pursuant to General Instruction A.2, an Interactive Data File is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T for any of the documents listed in General Instruction F.3.a or General Instruction F.3.b that include or amend information provided in response to Items 3.1, 4.3, 8.2.b, 8.2.d, 8.3.a, 8.3.b, 8.5.b, 8.5.c, 8.5.e, 10.1.a–d, 10.2.a–c, 10.2.e, 10.3, or 10.5. The Interactive Data File must be submitted with the filing of the document(s) listed in General Instruction F.3.a or General Instruction F.3.b.

d. The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and must be submitted in such a manner that—for any information that does not relate to all of the classes of a

Fund—will permit each class of the Fund to be separately identified.

### I. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the Fund may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the Fund chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rules 411(c), 439(b), and 483(c) under the Securities Act.

### Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors make informed decisions about whether to purchase the securities being offered. *The information in the prospectus should be clear, concise, and understandable. avoid the use of technical or legal terms, complex language, or excessive detail.*

Responses to the items of Part A should be as simple and direct as possible and should include only information needed to understand the fundamental characteristics of the Fund. Descriptions of practices that are required by law generally should not include detailed discussions of the law itself. No response is required for inapplicable items.

### Part B: Statement of Additional Information

The items in Part B call for additional information about the Fund that may be of interest to some investors. Part B also allows the Fund to augment discussions of matters described in the prospectus with additional information the Fund believes may be of interest to some investors. If information is included in

the prospectus, it need not be repeated in the SAI, and a Fund need not prepare a SAI or refer to it in the prospectus (or provide the undertaking required by Item 34.8) if all of the information required to be in the SAI is included in the prospectus. A Fund placing information in Part B should not repeat information that is in the prospectus, except where necessary to make Part B understandable.

Information in the SAI need not be included in the prospectus or be sent to investors with the prospectus provided that the cover page of the prospectus states that the SAI is available upon oral or written request and without charge, and includes a toll-free telephone number and email address, if any, for use by prospective investors to request the SAI. If the request is made prior to delivery of a confirmation with respect to a security offered by the prospectus, the SAI must be sent in a manner reasonably calculated for it to arrive prior to the confirmation. The SAI may be sent to the address to which the prospectus was delivered, unless the requester provides an alternate address for delivery of the SAI.

### General Instructions for Parts A and B

1. The information in the prospectus and the SAI should be organized to make it easy to understand the organization and operation of the Fund. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4 must appear in order in the prospectus and may not be preceded or separated by any other information.

2. The prospectus or the SAI may contain more information than called for by this Form, provided the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

3. The requirements for dating the prospectus apply equally to dating the SAI for purposes of Rule 423 under the Securities Act. The SAI should be made available at the same time that the prospectus becomes available for purposes of Rules 430 and 460 under the Securities Act.

4. The prospectus should not be presented in fold-out or road-map type fashion.

5. Instructions for charts, graphs, and sales literature:

(a) A registration statement may include any chart, graph, or table that is not misleading; however, only the fee table and the table of contents (required by Rule 481(c) under the Securities Act)

may precede the financial highlights specified in Item 4.

(b) If “sales literature” is included in the prospectus, (1) it should not significantly lengthen the prospectus nor obscure essential disclosure, and (2) members of the Financial Industry Regulatory Authority (“FINRA”) are not relieved of the filing and other FINRA requirements for investment company sales literature. (See Securities Act Release No. 5359, Jan. 26, 1973 [38 FR 7220 (Mar. 19, 1973)]).

### Part A—Information Required in a Prospectus

#### Item 1. Outside Front Cover

1. The outside front cover must contain the following information:

- a. The Fund’s name;
- b. identification of the type of Fund (e.g., bond fund, balanced fund, business development company, etc.) or a brief statement of the Fund’s investment objective(s);
- c. the title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);
- d. a statement that (A) the prospectus sets forth concisely the information about the Fund that a prospective investor ought to know before investing; (B) the prospectus should be retained for future reference; and (C) additional information about the Fund has been filed with the Commission and is available upon written or oral request and without charge (this statement should explain how to obtain the SAI, and whether any of it has been incorporated by reference into the prospectus). This statement should also explain how to obtain the Fund’s annual and semi-annual reports to shareholders. Provide a toll-free (or collect) telephone number for investors to call, and email address, if any, to request the Fund’s SAI; annual report; semi-annual report; or other information about the Fund; and to make shareholder inquiries. Also state whether the Fund makes available its SAI and annual and semi-annual reports, free of charge, on or through the Fund’s website at a specified internet address. If the Fund does not make its SAI and shareholder reports available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an internet website). Also include the information that the Commission maintains a website (<http://www.secdatabase.com>)

www.sec.gov) that contains the SAI, material incorporated by reference, and other information regarding funds;  
 e. the date of the prospectus and the date of the Statement of Additional Information;

f. if any of the securities being registered are to be offered for the account of shareholders, a statement to that effect;  
 g. information in substantially the tabular form indicated as to all

securities being registered that are to be offered for cash (estimate, if necessary):

Price to public	Sales load	Proceeds to registrant or other persons
Per Share		
Total		

#### Instructions.

1. If it is impracticable to state the price to the public, briefly explain how the price will be determined (*e.g.*, by reference to net asset value). If the securities will be offered at the market, indicate the market involved and the market price as of the latest practicable date.

2. The term “sales load” is defined in Section 2(a)(35) of the Investment Company Act. Subject to Instruction 3, only include the portion of the sales load that consists of underwriting discounts and commissions, and include any commissions paid by selling shareholders (the term “commissions” is defined in paragraph 17 of Schedule A of the Securities Act).

Commissions paid by other persons and other consideration to underwriters shall be noted in the second column and briefly described in a footnote.

3. Include in the table as sales load amounts borrowed to pay underwriting discounts and commissions or any other offering costs that are required to be repaid in less than one year. Exclude from the table, but include in a note thereto, the amount of funds borrowed to pay such costs that are required to be repaid in more than one year, and provide a cross-reference to the prospectus discussion of the borrowed amounts and the effect of repayment on fund assets available for investment.

4. Where an underwriter has received an over-allotment option, present

maximum-minimum information in the price table or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option may be described briefly in response to Item 5 rather than on the prospectus cover page.

5. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no arrangements have been made, so state. Set forth the following table in lieu of the “Total” information called for by the required table.

Price to public	Sales load	Proceeds to registrant or other persons
Total Minimum		
Total Maximum		

6. Set forth in a note to the proceeds column the total of other expenses of issuance and distribution called for by Item 27, stated separately for the Fund and for the selling shareholders, if any.

h. the statements required by paragraphs (1) and (2) of Rule 481(b) under the Securities Act;

i. if the Fund’s securities have no history of public trading, a prominent statement to that effect and a statement describing the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering;

*Instruction.* A Fund may omit the discount statement if it believes that, as a result of its investment or other policies, its capital structure, or the markets in which its shares trade, its shares are unlikely to trade at a discount from net asset value.

j. a cross-reference to the prospectus discussion of any factors that make the offering speculative or one of high risk, printed in bold face common type at least as large as ten point modern type and at least two points leaded; and

*Instruction.* No cross-reference is required where the risks associated with securities in which the Fund is authorized to invest are only the basic risks of investing in securities (*e.g.*, the risk that the value of portfolio securities may fluctuate depending upon market conditions, or the risks that debt securities may be prepaid and the proceeds from the prepayments invested in debt instruments with lower interest rates). Include the cross-reference if the nature of the Fund’s investment objectives, investment policies, capital structure, or the trading markets for the Fund’s securities increase the likelihood that an investor could lose a significant portion of his or her investment.

k. any other information required by Commission rules or by any other governmental authority having jurisdiction over the Fund or the issuance of its securities.

l. A statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Registrant’s shareholder reports will no longer be sent by mail, unless you specifically request paper copies of the reports from the Registrant [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may

elect to receive shareholder reports and other communications from the Registrant [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Registrant [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

2. The cover page may include other information if it does not, by its nature,

quantity, or manner of presentation impede understanding of the required information.

*Item 2. Cover Pages; Other Offering Information*

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identify the trading symbol(s) for those securities on the inside front or outside back cover page of the prospectus, unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the

Securities Act in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act on the outside back cover page of the prospectus.

*Item 3. Fee Table and Synopsis*

1. If the prospectus offers common stock of the Fund, include information about the costs and expenses that the investor will bear directly or indirectly, using the captions and tabular format illustrated below:

**SHAREHOLDER TRANSACTION EXPENSES:**

Sales Load (as a percentage of offering price) .....	_____	%
Dividend Reinvestment and Cash Purchase Plan Fees .....	_____	%

**ANNUAL EXPENSES** (as a percentage of net assets attributable to common shares):

Management Fees .....	_____	%
Interest Payments on Borrowed Funds .....	_____	%
Other expenses .....	_____	%
_____	_____	%
_____	_____	%
Total Annual Expenses .....	_____	%

Example

1 year

3 years

5 years

10 years

You would pay the following expenses on a \$1,000 investment, assuming a 5% annual return:

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

\$ \_\_\_\_\_ %

*Instructions.*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. Any caption not applicable to the Fund may be omitted from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

*Shareholder Transaction Expenses*

4. "Dividend Reinvestment and Cash Purchase Plan Fees" include all fees (except brokerage commissions) that are charged to participating shareholder accounts. The basis on which such fees are imposed should be described briefly in a note to the table.

5. If the Fund (or any other party under an agreement with the Fund) charges any other transaction fee, add another caption describing it, and list the maximum amount of the fee or basis on which the fee is deducted.

Underwriters' compensation that is paid with the proceeds of debt that is not to be repaid within one year need not be identified as sales load, but should be

set forth as a shareholder transaction expense with a brief narrative following the table explaining the nature of such payments.

*Annual Expenses*

6. State the basis on which payments will be made. "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net asset value attributable to common shares. State in the narrative following the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

7. a. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Fund), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses," and any expenses incurred within the Fund's own organization in connection with the research, selection, and supervision of investments. Where management fees are "tiered" or based on a "sliding scale," they should be calculated based on the fund's asset size after giving effect to the anticipated net proceeds of the present offering. In the case of a performance fee arrangement, assume the base fee. With respect to a best-efforts offering with breakpoints,

assume the maximum fee will be payable.

b. In lieu of the information about management fees required by Item 3.1, a business development company with a fee structure that is not based solely on the aggregate amount of assets under management should provide disclosure concerning the fee arrangement to allow investors to assess its impact on the Fund's expenses; a business development company may use any appropriate expense categories and may include items that may not, for accounting purposes, be treated as expenses. A business development company with special fee arrangements should provide a cross-reference, where applicable, to the discussion in Item 9.1.a of special management compensation plans.

8. "Interest Payments on Borrowed Funds" include all interest paid in connection with outstanding loans (including interest paid on funds borrowed to pay underwriting expenses), bonds, or other forms of debt. Show interest expenses as a percentage of net assets attributable to common shares and not the face amount of debt.

9. "Other Expenses" include all expenses (except fees and expenses reported in other items in the table) that are deducted from the Fund's assets and will be reflected as expenses in the Fund's statement of operations

(including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

10. *a.* If the Fund invests, or intends to invest based upon the anticipated net proceeds of the present offering, in shares of one or more “Acquired Funds,” add a subcaption to the “Annual Expenses” portion of the table directly above the subcaption titled “Total Annual Expenses.” Title the additional subcaption: “Acquired Fund Fees and Expenses.” Disclose in the subcaption fees and expenses incurred

indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this Item, an “Acquired Fund” means any company in which the Fund invests or intends to invest (A) that is an investment company or (B) that would be an investment company under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds,

it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption “Other Expenses” in lieu of this disclosure requirement.

*b.* Determine the “Acquired Fund Fees and Expenses” according to the following formula:

$$AFFE = [(F1/FY) * AI1 * D1] + [(F2/FY) * AI2 * D2] + [(F3/FY) * AI3 * D3] + \text{Transaction Fees} + \text{Incentive Allocations}$$

Average Net Assets of the Fund

Where:

AFFE .....	Acquired Fund fees and expenses;
F1, F2, F3, . . . ..	Total annual operating expense ratio for each Acquired Fund;
FY .....	Number of days in the relevant fiscal year;
AI1, AI2, AI3, . . . ..	Average invested balance in each Acquired Fund;
D1, D2, D3, . . . ..	Number of days invested in each Acquired Fund;
“Transaction Fees” .....	The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and
“Incentive Allocations” .....	Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund’s income, capital gains and/or appreciation in the Acquired Fund.

*c.* Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 4.1 (see Instruction 15 to Item 4.1), and include the anticipated net proceeds of the present offering.

*d.* The total annual operating expense ratio used for purposes of this calculation (F1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund’s most recent fiscal period as disclosed in the Acquired Fund’s most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Fund. If the Fund has a written fee agreement with the Acquired Fund that would affect the ratio of expenses to average net assets as disclosed in the Acquired Fund’s most recent shareholder report, the Fund should determine the ratio of expenses to average net assets for the Acquired Fund’s most recent fiscal period using the written fee agreement. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions

resulting from fee waivers or reimbursements by the Acquired Funds’ investment advisers or sponsors; and (ii) Acquired Fund expenses do not include any expenses (*i.e.*, performance fees) that are calculated solely upon the realization and/or distribution of gains, or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind. If an Acquired Fund has no operating history, include in the Acquired Funds’ expenses any fees payable to the Acquired Fund’s investment adviser or its affiliates stated in the Acquired Fund’s registration statement, offering memorandum or other similar communication without giving effect to any performance.

*e.* If a Fund has made investments in the most recent fiscal year, to determine the average invested balance (AI1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3

succeeding months, the denominator would be 4).

*f.* For investments based upon the anticipated net proceeds from the present offering, base the “Acquired Fund Fees and Expenses” on: (i) Assumptions about specific funds in which the Fund expects to invest, (ii) estimates of the amount of assets the Fund expects to invest in each of those Acquired Funds, and (iii) an assumption that the investment was held for all of the Fund’s most recent fiscal year and was subject to the Acquired Funds’ fees and expenses for that year. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

*g.* If an Acquired Fund charges an Incentive Allocation or any other fee based on income, capital gains and/or appreciation (*i.e.*, performance fee), the Fund must include a footnote to the “Acquired Fund Fees and Expenses” subcaption that:

(1) Discloses the typical Incentive Allocation or such other fee (expressed as a percentage) to be paid to the investment advisers of the Acquired Funds (or an affiliate);

(2) discloses that Acquired Funds’ fees and expenses are based on historic fees and expenses; and

(3) states that future Acquired Funds’ fees and expenses may be substantially higher or lower because certain fees are based on the performance of the Acquired Funds, which may fluctuate over time.

*h.* If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in the “Acquired Fund Fees and Expenses.” The aggregate expenses of the Master-Feeder Fund must include the fees and expenses incurred indirectly by the Feeder Fund as a result of the Master Fund’s investment in shares of one or more companies (A) that are investment companies or (B) that would be investment companies under Section 3(a) of the Investment Company Act but for the exceptions to that definition provided for in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. For purposes of this instruction, a “Master-Feeder Fund” means a two-tiered arrangement in which one or more investment companies registered under the Investment Company Act (each a “Feeder Fund”) holds shares of a single management investment company registered under the Investment Company Act (the “Master Fund”) in accordance with Section 12(d)(1)(E) of the Investment Company Act.

*i.* The Fund may clarify in a footnote to the fee table that the total annual expenses item under Item 3.1 is different from the ratio of expenses to average net assets given in response to Item 4.1, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

*Example*

11. For purposes of the Example in the table:

*a.* Assume that the rates listed under “Annual Expenses” remain the same each year, except to reduce annual expenses to reflect the scheduled maturity of outstanding debt or the completion of organization expense amortization;

*b.* assume reinvestment of all dividends and distributions at net asset value;

*c.* reflect all recurring and nonrecurring fees including underwriting discounts and commissions; and

*d.* prominently disclose that the Example should not be considered a representation of future expenses and that actual expenses may be greater or lesser than those shown.

2. Include a synopsis of information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve or fewer printed pages.

*Instruction.* The synopsis should provide a clear and concise description of the key features of the offering and the Fund, with cross-references to

relevant disclosures elsewhere in the prospectus or Statement of Additional Information.

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S-K [17 CFR 229.101(e)] (concerning reports and other information filed with the Commission).

*Item 4. Financial Highlights*

1. *General.* Furnish the following information for the Fund, or for the Fund and its subsidiaries, consolidated as prescribed in Rule 6–03 [17 CFR 210.6–03] of Regulation S–X:

Financial Highlights

Per Share Operating Performance

- a. Net Asset Value, Beginning of Period
  - (1) Net Investment Income
  - (2) Net Gains or Losses on Securities (both realized and unrealized)
- b. Total From Investment Operations
- c. Less Distributions
  - (1) Dividends (from net investment income)
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
  - (2) Distributions (from capital gains)
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
  - (3) Returns of Capital
    - (A) To Preferred Shareholders
    - (B) To Common Shareholders
- d. Total Distributions
- e. Net Asset Value, End of Period
- f. Per Share Market Value, End of Period
- g. Total Investment Return

Ratios/Supplemental Data

- h. Net Assets, End of Period
- i. Ratio of Expenses to Average Net Assets
- j. Ratio of Net Income to Average Net Assets
- k. Portfolio Turnover Rate

*Instructions.*

*General Instructions*

1. [Removed and reserved.]

2. Briefly explain the nature of the information contained in the table and its source. The auditor’s report as to the financial highlights need not be included in the prospectus. Note that the auditor’s report is contained elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

3. Present the information in comparative columns for each of the last ten fiscal years of the Fund (or for the life of the Fund and its immediate predecessors, if less), but only for periods subsequent to the effective date of the Fund’s first Securities Act registration statement. In addition, present the information for the period

between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. Where the period for which the Fund provides financial highlights is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

4. List per share amounts at least to the nearest cent. If the offering price is computed in tenths of a cent or more, state the amounts on the table in tenths of a cent. Present all information using a consistent number of decimal places.

5. Provide all information in the table, including distributions to preferred shareholders, on a common share equivalent basis.

6. Make, and indicate in a note, appropriate adjustments to reflect any stock split or stock dividend during the period.

7. If the investment adviser has been changed during the period covered by this Item, indicate the date(s) of the change(s) in a note.

8. The financial highlights for at least the latest five fiscal years must be audited and must so state.

*Per Share Operating Performance*

9. Derive the amount for caption a(1) by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods may be acceptable but should be explained briefly in a note to the table.

10. The amount shown at caption a(2) is the balancing figure derived from the other figures in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund’s shares in relation to fluctuating market values for the portfolio.

11. For any distributions made from sources other than net investment income and capital gains, state the per share amounts thereof separately at caption c(3) and note the nature of the distributions.

12. In caption e, use the net asset value for the end of each period for which information is being provided. If the Fund has not been in operation for a full fiscal year, state its net asset value

immediately after the closing of its first public offering in a note to the caption.

#### Total Investment Return

13. When calculating "total investment return" for caption g:

a. Assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table;

b. note that the total investment return does not reflect sales load; and

c. assume reinvestment of dividends and distributions at prices obtained by the Fund's dividend reinvestment plan or, if there is no plan, at the lower of the per share net asset value or the closing market price of the Fund's shares on the dividend/distribution date.

14. A Fund also may include, as a separate caption, total return based on per share net asset value, provided the Fund briefly explains in a note the differences between this calculation and the calculation required by caption g.

#### Ratios and Supplemental Data

15. Compute "average net assets" for captions i and j based on the value of net assets determined no less frequently than the end of each month. Indicate in a note that the expense ratio and net investment income ratio do not reflect the effect of dividend payments to preferred shareholders.

16. Compute the "ratio of expenses to average net assets" using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6-07 of Regulation S-X, and including reductions resulting from complying

with paragraphs 2(a) and (f) of Rule 6-07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6-07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

17. Compute portfolio turnover rate as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the fiscal year by (B) the monthly average of the value of portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition was one year or less. Include all long-term securities, including U.S. Government securities. Purchases include cash paid upon conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights or warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Fund acquired the assets of another investment company or of a personal

holding company in exchange for its own shares, exclude from purchases the value of securities so acquired, and, from sales, all sales of the securities made following a purchase-of-assets transaction to realign the Fund's portfolio. Appropriately adjust the denominator of the portfolio turnover computation, and disclose the exclusions and adjustments.

d. Include in purchases and sales short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of portfolio securities sold during the period.

2. *Business Development Companies.* If the Fund is regulated as a business development company under the Investment Company Act, furnish in a separate section the information required by Items 301, 302, and 303 of Regulation S-K.

3. *Senior Securities.* Furnish the following information as of the end of the last ten fiscal years for each class of senior securities (including bank loans) of the Fund. If consolidated statements were prepared as of any of the dates specified, furnish the information on a consolidated basis:

(1)	(2)	(3)	(4)	(5)
Year .....	Total Amount Outstanding Exclusive of Treasury Securities	Asset Coverage Per Unit	Involuntary Liquidating Preference Per Unit	Average Market Value Per Unit (Exclude Bank Loans)

#### Instructions.

1. Instructions 2, 3, and 8 to Item 4.1 also apply to this sub-item.

2. Use the method described in Section 18(h) of the Investment Company Act to calculate the asset coverage to be set forth in column (3). However, in lieu of expressing asset coverage in terms of a ratio, as described in Section 18(h), express it for each class of senior securities in terms of dollar amounts per share (in the case of preferred stock) or per \$1,000 of indebtedness (in the case of senior indebtedness).

3. Column (4) need be included only with respect to senior stock.

4. Set forth in a note to the table the method used to determine the averages called for by column (5) (e.g., weighted, monthly, daily, etc.).

5. Briefly explain the terms used in the headings of the columns.

#### Item 5. Plan of Distribution

Briefly describe how the securities being registered will be distributed. Include the following information:

1. For each principal underwriter distributing the securities being offered set forth:

a. Its name and principal business address;

b. a brief discussion of the nature of any material relationship with the Fund

(other than that of principal underwriter), including any arrangement under which a principal underwriter or its affiliates will perform administrative or custodial services for the Fund;

*Instruction.* Any material relationship between the underwriter (or its affiliates) and the investment adviser (or its affiliates) of the Fund relating to the business or operation of the Fund constitutes a material relationship of the underwriter with the Fund.

c. the amount of securities underwritten; and

d. the nature of the obligation to distribute the Fund's securities.



*Instruction.* All that is required to be disclosed as to the nature of the underwriter's obligation is whether the underwriter will be committed to take and pay for all the securities if any are taken, or whether it is merely an agency or "best-efforts" arrangement under which the underwriter is required to take and pay for only such securities as it may sell to the public. Conditions precedent to the underwriter's taking the securities, including "market outs," need not be described, except in the case of an agency or "best-efforts" arrangement.

2. The price to the public.

*Instructions.*

1. If it is impracticable to state the price to the public, concisely explain the manner in which the price will be determined, including a description of the valuation procedure used by the Fund in determining the price. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to market price, indicate the market involved and the market price as of the latest practicable date.

2. For restrictions on distributions and repurchases of closed-end company securities, see Section 23 of the Investment Company Act, and Investment Company Act Rel. No. 3187 (Feb. 6, 1961) [26 FR 1275 (Feb. 15, 1961)].

3. Briefly explain the basis for any differences in the price at which securities are offered to the public, as individuals and/or as groups, and to officers, directors and employees of the Fund, its adviser or underwriter.

3. To the extent not set forth on the cover page of the prospectus, state the amount of the sales load, if any, as a percentage of the public offering price, and concisely describe the commissions to be allowed or paid to (i) underwriters, including all other items that would be deemed by FINRA to constitute underwriting compensation for purposes of FINRA's rules regarding securities offerings, underwriting and compensation, and (ii) dealers, including all cash, securities, contracts, and/or other considerations to be realized by any dealer in connection with the sale of securities.

*Instruction.* If any dealers are to act in the capacity of sub-underwriters and are allowed or paid any additional discounts or commission for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

4. If the underwriting agreement provides for indemnification by the Fund of the underwriters or their controlling persons against any liability

arising under the Securities Act or Investment Company Act, briefly describe such indemnification provisions.

5. Provide the identity of any finder and, if applicable, concisely describe the nature of any material relationship between such finder and the Fund, its officers, directors, principal shareholders, finders or promoters or the principal underwriter(s), or the managing underwriter(s), if any, and, in each case, the affiliates or associates thereof.

6. Indicate the date by which investors must pay for the securities.

7. If the securities are being offered in conjunction with any retirement plan, provide a statement regarding the manner in which further information about the plan can be obtained.

8. If investors' funds will be forwarded to an escrow account, identify the escrow agent, and briefly describe the conditions for release of the funds, whether such funds will accrue interest while in escrow, and the manner in which the monies in such account will be distributed if such conditions are not satisfied, including how accrued interest, if any, will be distributed to investors.

9. If the securities offered by the Fund are not being listed on a national securities exchange, disclose whether any of the underwriters intends to act as a market maker with respect to such unlisted securities.

10. Briefly outline the plan of distribution of any securities that are to be offered other than through underwriters.

a. If the securities are to be offered through the selling efforts of brokers or dealers, concisely describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) that will participate in the offering, and state the amount to be offered through each.

b. If any of the securities being registered are to be offered other than for cash, describe briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and the person(s) responsible for such expenses.

c. If the distribution is to be made under a plan of acquisition, reorganization, readjustment, or

succession, provide a statement regarding the general effect of the plan and when it becomes operative. As to any material amount of assets to be acquired under the plan, furnish the information required by Instruction 4 to Item 7.1 below.

#### *Item 6. Selling Shareholders*

If any securities being registered are to be offered for the account of shareholders, furnish the information required by Item 507 of Regulation S-K [17 CFR 229.507].

#### *Item 7. Use of Proceeds*

1. State the principal purposes for which the net proceeds of the offering are intended to be used and the approximate amount intended to be used for each purpose.

*Instructions.*

1. If any substantial portion of the proceeds will not be allocated in accordance with the investment objectives and policies of the Fund, a statement to that effect should be made together with a statement of the amount involved and an indication of how that amount will be invested.

2. If a material part of the proceeds will be used to discharge indebtedness, state the interest rate and maturity of the indebtedness.

3. If the Fund intends to incur loans to pay underwriting commissions or any other organizational or offering expenses, disclose this fact and state the name of the lender, the amount of the first installment, the rate of interest, the date on which payments will begin, the dates and amounts of subsequent installments, and the final maturity date. Explain that the interest paid on such borrowing will not be available for investment purposes and will increase the expenses of the fund.

4. If any material part of the proceeds will be used to acquire assets other than in the ordinary course of business, briefly describe the assets, the names of the persons from whom they are to be acquired, the cost of the assets to the Fund, and how the costs were determined.

2. Disclose how long it is expected to take to fully invest net proceeds in accordance with the Fund's investment objectives and policies, the reasons for any anticipated lengthy delay in investing the net proceeds, and the consequences of any delay.

#### *Item 8. General Description of the Registrant*

Concisely discuss the organization and operation, or proposed operation, of the Fund. Include the information specified below.

1. *General.* Briefly describe the Fund, including:

a. The date and form of organization and the name of the state or other jurisdiction under whose laws it is organized; and

b. the classification and subclassification under Sections 4 and 5 of the Investment Company Act.

2. *Investment Objectives and Policies.* Concisely describe the investment objectives and policies of the Fund that will constitute its principal portfolio emphasis, including the following:

a. If these objectives may be changed without a vote of the holders of a majority of voting securities, a brief statement to that effect;

b. how the Fund proposes to achieve its objectives, including:

(1) The types of securities in which the Fund invests or will invest principally;

(2) the identity of any particular industry or group of industries in which the Fund proposes to concentrate.

*Instruction.* Concentration, for purposes of this Item, is deemed 25 percent or more of the value of the Fund's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with the Fund's name.

c. identify other policies of the Fund that may not be changed without the

vote of a majority of the outstanding voting securities, including those policies that the Fund deems to be fundamental within the meaning of Section 8(b) of the Investment Company Act; and

d. briefly describe the significant investment practices or techniques that the Fund employs or intends to employ (such as risk arbitrage, reverse repurchase agreements, forward delivery contracts, when-issued securities, stand-by commitments, options and futures contracts, options on futures contracts, currency transactions, foreign securities, investing for control of management, and/or lending of portfolio securities) that are not described pursuant to subparagraph 2.c above or subparagraph 3 below.

3. *Risk Factors.* Concisely describe the risks associated with an investment in the Fund, including the following:

a. *General.* Discuss the principal risk factors associated with investment in the Fund specifically as well as those factors generally associated with investment in a company with investment objectives, investment policies, capital structure, or trading markets similar to the Fund's.

b. *Effects of Leverage.* If the prospectus offers common stock of the Fund and the Fund has outstanding or

is offering a class of senior securities as defined in Section 18 of the Investment Company Act, then:

(1) Set forth the annual rate of interest or dividend payments on the senior securities;

*Instruction.* If payments will vary because the interest or dividend rate is variable, provide the initial rate or, if the security is currently outstanding, the current rate.

(2) set forth the annual return that the Fund's portfolio must experience in order to cover annual interest or dividend payments on senior securities; and

(3) provide a table illustrating the effect on return to a common stockholder of leverage (using senior securities) in the format illustrated below, using the captions provided, and assuming annual returns on the Fund's portfolio (net of expenses) of minus ten, minus five, zero, five, and ten percent.

(4) The table should be accompanied by a brief narrative explaining that the purpose of the table is to assist the investor in understanding the effects of leverage. Indicate that the figures appearing in the table are hypothetical and that actual returns may be greater or less than those appearing in the table.

Assumed Return on Portfolio (Net of Expenses) .....	- 10%	- 5%	0%	- 5%	10%
Corresponding Return to Common Stockholder .....	%	%	%	%	%

#### *Instructions.*

1. Round all percentages to the nearest hundredth of one percent.

2. A Fund may assume additional rates of return on its portfolio; however, to the extent a Fund shows an additional positive rate of return, it must also show an additional negative rate of return of the same magnitude. A Fund may show the positive rate of return at which the corresponding rate of return to the common stockholder is zero without showing the corresponding negative rate of return.

3. Compute the "corresponding return to common stockholder" as follows: Multiply the total amount of fund assets at the beginning of the period by the assumed rate of return; subtract from the resulting product all interest accrued or dividends declared on senior securities that would be made during the year following the offering; and divide the resulting difference by the total amount of fund assets attributable to common stock. If payments will vary because the interest or dividend rate is variable, use

the initial rate or, if the security is currently outstanding, the current rate.

4. *Other Policies.* Briefly discuss the types of investments that will be made by the Fund, other than those that will constitute its principal portfolio emphasis (as discussed in Item 8.2 above), and any policies or practices relating to those investments.

#### *Instructions.*

1. This discussion should receive less emphasis in the prospectus than that required by Item 8.2 and, if appropriate in light of Instructions 2 and 3 below, may be omitted or limited to the information necessary to identify the type of investment, policy, or practice.

2. Do not discuss a policy that prohibits a particular practice or permits a practice that the Fund has not used within the past twelve months (or since its initial public offering, if that period is shorter) and does not intend to use in the future.

3. If a policy limits a particular practice so that no more than five percent of the Fund's net assets are at risk, or if the Fund has not followed that

practice within the last year (or since its initial public offering, if such period is shorter) in such a manner that more than five percent of net assets were at risk and does not intend to follow such practice so as to put more than five percent of net assets at risk, limit the prospectus disclosure about such practice to that necessary to identify the practice. Disclose whether or not the Fund will provide prior notice to security holders of its intention to commence or expand the use of such practice.

The amount of the Fund's net assets that are at risk for purposes of determining whether "more than five percent of net assets are at risk" is not limited to the initial amount of the Fund's assets that are invested in a particular practice, e.g., the purchase price of an option. The amount of net assets at risk is determined by reference to the potential liability or loss that may be incurred by the Fund in connection with a particular practice.

5. *Share Price Data.* If the prospectus offers common stock or other type of

common equity security (collectively “common stock”) and if the Fund’s common stock is publicly held, provide the following information:

a. Identify the principal United States market or markets in which the common stock is being traded. Where there is no established public trading market, furnish a statement to that effect.

*Instruction.* The existence of limited or sporadic quotations should not itself be deemed to constitute an “established public trading market.”

b. If the principal United States market for the common stock is an exchange, state the high and low sales prices for the stock for each full quarterly period within the two most recent fiscal years and each full fiscal quarter since the beginning of the current fiscal year, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for the stock. If the principal United States market for the common stock is not an exchange, state the range of high and low bid information for the common stock for the periods described in the preceding sentence, as regularly quoted in the automated quotation system of a registered securities association or, if not so quoted, the range of reported high and low bid quotations, indicating the source of the quotations.

*Instructions.*

1. This information should be set forth in tabular form.

2. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.

3. Where there is an absence of an established public trading market, qualify reference to quotations by an appropriate explanation.

4. With respect to each quotation, disclose the net asset value and the discount or premium to net asset value (expressed as a percentage) represented by the quotation.

5. Where the shares of the Fund trade at their high or low share price for more than one day during the period, the Fund should provide the discount or premium information for the day on which the premium or discount was greatest.

c. Include share price and corresponding net asset value and premium/discount information as of the latest practicable date.

d. Disclose whether the Fund’s common stock has historically traded for an amount less than, equal to, or exceeding net asset value. Disclose any methods undertaken or to be undertaken

by the Fund that are intended to reduce any discount (such as the repurchase of fund shares, providing for the ability to convert to an open-end investment company, guaranteed distribution plans, etc.), and briefly discuss the effects that these measures have or may have on the Fund.

e. If the shares of the Fund have no history of public trading, discuss the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering. If the Fund has omitted the statement required by Item 1.i, describe the basis for the Fund’s belief that its shares will not trade at a discount from net asset value.

6. *Business Development Companies.* A Fund that is a business development company should, in addition, provide the following information:

a. *Portfolio Companies.* For each portfolio company in which the Fund is investing, disclose: (1) The name and address; (2) nature of business; (3) title, class, percentage of class, and value of portfolio company securities held by the Fund; (4) amount and general terms of all loans to portfolio companies; and (5) the relationship of the portfolio companies to the Fund.

*Instructions.*

1. The description of the nature of the business of a portfolio company in which the Fund is investing may vary according to the extent of the Fund’s investment in the particular portfolio company. The Fund need only briefly identify the nature of the business of a portfolio company in which the Fund’s investment constitutes less than five percent of the Fund’s assets.

2. In describing the nature of the business of a portfolio company, include matters such as the competitive conditions of the business of the company; its market share; dependence on a single or small number of customers; importance to it of any patents, trademarks, licenses, franchises, or concessions held; key operating personnel; and particular vulnerability to changes in government regulation, interest rates, or technology.

3. In describing the relationship of portfolio companies to the Fund, include a discussion of the extent to which the Fund makes available significant managerial assistance to its portfolio companies. Disclose any other material business, professional, or family relationship between the officers and directors of the Fund and any portfolio company, its officers, directors, and affiliates (as defined in Rule 12b-2 under the Exchange Act).

b. *Certain Subsidiaries.* If the Fund has a wholly-owned small business investment company subsidiary, disclose: (1) Whether the subsidiary is regulated as a business development company or investment company under the Investment Company Act; (2) the percentage of the Fund’s assets invested in the subsidiary; and (3) material information about the small business investment company’s operations, including the special risks of investing in a portfolio heavily invested in securities of small and developing or financially troubled businesses.

c. *Financial Statements.* Unless the business development company has had less than one fiscal year of operations, provide the financial statements of the Fund.

*Instructions.*

1. a. Furnish, in a separate section following the responses to the above items in Part A of the registration statement, the financial statements and schedules required by Regulation S-X [17 CFR part 210]. A business development company should comply with the provisions of Regulation S-X generally applicable to registered management investment companies. (See Section 210.3-18 and Sections 210.6-01 through 210.6-10 of Regulation S-X.)

b. A business development company should provide an indication in its Schedule of Investments of those investments that are not qualifying investments under Section 55(a) of the Investment Company Act and, in a footnote, briefly explain the significance of non-qualification.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part A and included in Part C of the Registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. columns C and D of Schedule IV [17 CFR 210.12-03] in support of the most recent balance sheet.

3. A business development company with less than one fiscal year of operations should provide its financial statements in the Statement of Additional Information in response to Item 24.

d. *Prior Operations.* If the Fund has had an operating history prior to electing to be regulated as a business development company, disclose any anticipated changes in its operations as a result of coming into compliance with Section 55(a) of the Investment Company Act. This information may be omitted in a prospectus used a sufficient

time after election to be regulated as a business development company so that it is no longer material.

e. *Special Risk Factors.* To the extent not disclosed in response to this Item or Item 8.3, concisely describe the special risks of investing in a business development company, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses. (See Section 64(b)(1) of the Investment Company Act.)

#### Item 9. Management

1. *General.* Describe concisely how the business of the Fund is managed, including:

a. *Board of Directors.* A description of the responsibilities of the board of directors with respect to the management of the Fund;

##### *Instructions.*

1. In responding to this Item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Fund's jurisdiction of organization.

2. A Fund that has elected to be regulated as a business development company should briefly describe the terms of any special compensation plans available to management.

b. *Investment Advisers.* For each investment adviser of the Fund:

(1) Its name and principal business address, a description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business;

*Instruction.* If the investment adviser is subject to more than one level of control, it is sufficient to provide the name of the ultimate control person.

(2) A description of the services provided by the investment adviser;

##### *Instructions.*

1. If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are subject to the authority of the board of directors, responsible for overall management of the Fund's business affairs, it is sufficient to state that fact instead of listing all services provided.

2. A Fund that has elected to be regulated as a business development company should describe briefly the type of managerial assistance that is or will be provided to the businesses in which it is investing and the qualifications of the investment adviser to render such management assistance.

(3) A description of its compensation; and

##### *Instructions.*

1. State generally what the adviser's fee is or will be as a percentage of

average net assets, including any breakpoint. It is not necessary to include precise details as to how the fee is computed or paid.

2. If the investment advisory fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment.

(4) A statement, adjacent to the disclosure required by paragraph 1.b(3) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

c. *Portfolio Management.* The name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund.

*Instruction.* If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (e.g., lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

d. *Administrators.* The identity of any other person who provides significant administrative or business affairs management services (e.g., an "Administrator" or "Sub-Administrator"), a description of the

services provided, and the compensation to be paid;

e. *Custodians.* The name and principal business address of the custodian(s), transfer agent, and dividend paying agent;

f. *Expenses.* The type of expenses for which the Fund is responsible, and, if organization expenses of the Fund are to be paid out of its assets, how the expenses will be amortized and the period over which the amortization will occur; and

g. *Affiliated Brokerage.* If the Fund pays (or will pay) brokerage commissions to any broker that is an (1) affiliated person of the Fund, (2) affiliated person of such person, or (3) affiliated person of an affiliated person of the Fund, its investment adviser, or its principal underwriter, a statement to that effect.

2. *Non-resident Managers.* If any non-resident officer, director, underwriter, investment adviser, or expert named in the registration statement has a substantial portion of its assets located outside the United States, identify each person, and state how the enforcement by investors of civil liabilities under the federal securities laws may be affected. This disclosure should indicate whether:

a. Investors will be able to effect service of process within the United States upon these persons;

b. investors will be able to enforce, in United States courts, judgments against these persons obtained in such courts predicated upon the civil liability provisions of the federal securities laws;

c. the appropriate foreign courts would enforce judgments of United States courts obtained in actions against these persons predicated upon the civil liability provisions of the federal securities laws; and

d. the appropriate foreign courts would enforce, in original actions, liabilities against these persons predicated solely upon the federal securities laws.

*Instruction.* If any portions of this disclosure are stated to be based upon an opinion of counsel, name the counsel in the prospectus, and include an appropriate manually signed consent to the use of counsel's name and opinion as an exhibit to the registration statement.

3. *Control Persons.* Identify each person who, as of a specified date no more than 30 days prior to the date of filing the registration statement (or amendment to it), controls the Fund.

*Instruction.* For the purposes of this Item, "control" means (1) the beneficial ownership, either directly or through one or more controlled companies, of

more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the Investment Company Act, which has become final, that control exists.

*Item 10. Capital Stock, Long-Term Debt, and Other Securities*

1. **Capital Stock.** For each class of capital stock of the Fund, state the title of the class and briefly describe all of the matters listed in paragraphs 1.a through 1.f that are relevant:

a. Concisely discuss the nature and most significant attributes, including, where applicable, (1) dividend rights, policies, or limitations; (2) voting rights; (3) liquidation rights; (4) liability to further calls or to assessments by the Fund; (5) preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and (6) any material obligations or potential liability associated with ownership of the security (not including investment risks);

*Instructions.*

1. A complete legal description of the securities should not be given.

2. If the Fund has a policy of making distribution or dividend payments at predetermined times and minimum rates, disclosure should include a statement that, if the fund's investments do not generate sufficient income, the fund may be required to liquidate a portion of its portfolio to fund these distributions, and therefore these payments may represent a reduction of the shareholders' principal investment. The tax consequences of such payments also should be described briefly.

b. with respect to preferred stock, (1) state whether there are any restrictions on the Fund while there is an arrearage in the payment of dividends or sinking fund installments, and, if so, concisely describe the restrictions and (2) briefly describe provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, requiring the creation or maintenance of reserves, or permitting or restricting the issuance of additional securities;

c. if the rights of holders of the security may be modified other than by a vote of a majority or more of the shares outstanding, voting as a class, so state, and briefly explain;

d. if rights evidenced by, or the amounts payable with respect to, any class of securities being described are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include sufficient information regarding the

other securities to enable investors to understand such rights and limitations;

e. if the Fund has a dividend reinvestment plan, briefly discuss the material aspects of the plan including, but not limited to, whether the plan is automatic or whether shareholders must affirmatively elect to participate; (2) the method by which shareholders can elect to reinvest stock dividends or, if the plan is automatic, to receive cash dividends; (3) from whom additional information about the plan may be obtained (including a telephone number or address); (4) the method of determining the number of shares that will be distributed in lieu of a cash dividend; (5) the income tax consequences of participation in the plan (*i.e.*, that capital gains and income are realized, although cash is not received by the shareholder); (6) how to terminate participation in the plan and rights upon termination; (7) if applicable, that an investor holding shares that participate in the dividend reinvestment plan in a brokerage account may not be able to transfer the shares to another broker and continue to participate in the dividend reinvestment plan; (8) the type and amount (if known) of fees, commissions, and expenses payable by participants in connection with the plan; and (9) if a cash purchase plan option is available, any minimum or maximum investment required; and

f. briefly describe any provision of the Fund's charter or bylaws that would have an effect of delaying, deferring, or preventing a change of control of the Fund and that would operate only with respect to an extraordinary corporate transaction involving the Fund, such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation.

*Instruction.* Provisions and arrangements required by law or imposed by governmental or judicial authority need not be discussed. Provisions or arrangements adopted by the Fund to effect or further compliance with laws or governmental or judicial mandate must be described where compliance does not require the specific provisions or arrangements adopted.

2. **Long-Term Debt.** If the Fund is issuing or has outstanding a class of long-term debt, state the title of the debt securities and their principal amount, and concisely describe any of the matters listed in paragraphs 2.a through 2.e that are relevant:

a. Provisions concerning maturity, interest, conversion, redemption, amortization, sinking fund, and/or retirement;

b. provisions restricting the declaration of dividends, requiring the

maintenance of any ratio or assets, and/or requiring the creation or maintenance of reserves;

c. provisions permitting or restricting the issuance of additional securities, the ability to incur additional debt, the release or substitution of assets securing the issue, and/or the modification of the terms of the securities;

*Instruction.* A complete legal description of the securities should not be given.

d. for each trustee, its name, the nature of any material relationship it has with the Fund or any of its affiliates, the percentage of securities necessary to require the trustee to take action, and any indemnification the trustee may require before proceeding against assets of the Fund; and

e. to the extent not otherwise disclosed in response to this Item, whether the rights evidenced by the long-term debt are, or may be, materially limited or qualified by the rights of any other authorized class of securities, and, if so, include sufficient information regarding such other securities to enable investors to understand such rights and limitations.

3. **General.** Concisely describe the significant attributes of each other class of the Fund's authorized securities. The description should be comparable to that called for by paragraphs 1 and 2 of this Item. If the securities are subscription warrants or rights, state the title and amount of securities called for and the period during which, and the prices at which, the warrants or rights are exercised.

4. **Taxes.** Concisely describe the tax consequences to investors of an investment in the securities being offered. If the Fund intends to qualify for treatment under Subchapter M of the Internal Revenue Code of 1986 [26 U.S.C. 851–856], it is sufficient, in the absence of special circumstances, to state that: (i) The Fund will distribute all of its net investment income and gains to shareholders and that these distributions are taxable as ordinary income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Fund but shareholders not subject to tax on their income will not be required to pay tax on amounts distributed on them; and (iii) the Fund will inform shareholders of the amount and nature of the income or gains.

*Instructions.*

1. The description should not include detailed discussions of applicable law.

2. The Fund should specifically address whether shareholders will be subject to the alternative minimum tax.

5. *Outstanding Securities.* Furnish the following information, in substantially the tabular form indicated, for each

class of authorized securities of the Fund. The information must be current within 90 days of the filing of this

registration statement or amendment to it.

(1)	(2)	(3)	(4)
Title of Class	Amount Authorized	Amount Held by Registrant or for its Account	Amount Outstanding Exclusive of Amount Shown Under (3)

6. *Securities Ratings.* If the prospectus relates to senior securities of the Fund that have been assigned a rating by a nationally recognized securities rating organization and the rating is disclosed in the prospectus, briefly discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Fund to maintain the rating, and whether or not the Fund intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Fund or any of its affiliates and the NRSRO under which the NRSRO provides such rating. If the prospectus relates to securities other than senior securities of the Fund that have been assigned a rating by a NRSRO, the information required by this paragraph may be provided in the Statement of Additional Information unless the rating criteria will materially affect the investment policies of the Fund (e.g., if the rating agency establishes criteria for selection of the Fund's portfolio securities with which the Fund intends to comply), in which case it should be included in the prospectus.

*Instructions.*

1. The term "nationally recognized securities rating organization" has the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act.

2. Rule 436(g)(1) of Regulation C under the Securities Act [17 CFR 230.436(g)(1)] provides that a security rating assigned by an NRSRO to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not considered a part of the registration statement for purposes of Sections 7 and 11 of the Securities Act. Therefore, in the case of disclosure of a rating assigned to these types of securities issued by the Fund, the Fund need not include a written consent of the NRSRO as an exhibit to the registration statement as required by Item 25.2.n but must provide the disclosure called for by this Item.

3. Reference should be made to the statement of the Commission's policy on security ratings set forth under the section "General" in Regulation S-K [17 CFR 229.10] for the Commission's views on other important matters to be

considered in disclosing securities ratings.

*Item 11. Defaults and Arrears on Senior Securities*

1. State the nature, date, and amount of default of payment of principal, interest, or amortization for each issue of long-term debt of the Fund that is in default on the date of filing.

2. If an issue of capital stock has any accumulated dividend in arrears at the date of filing, state the title of each issue and the amount per share in arrears.

*Item 12. Legal Proceedings*

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund, any subsidiary of the Fund, or the Fund's investment adviser or principal underwriter is a party. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding instituted by a governmental authority or known to be contemplated by a governmental authority.

*Instruction.* Legal Proceedings, for purposes of this Item, are material only to the extent that they are likely to have a material adverse effect upon: (1) The ability of the investment adviser or principal underwriter to perform its contract with the Fund; or (2) the Fund.

*Item 13. [Removed and Reserved]*

**Part B—Information Required in a Statement of Additional Information**

*Item 14. Cover Page*

1. The outside cover page must contain the following information:

- The Fund's name;
- a statement or statements (1) that the Statement of Additional Information is not a prospectus, (2) that the Statement of Additional Information should be read with the prospectus, and (3) how a copy of the prospectus may be obtained;
- the date of the Statement of Additional Information;

d. the date of the related prospectus and any other identifying information that the Fund deems appropriate; and

e. the statement required by paragraph (b)(2) of Rule 481 under the Securities Act.

2. The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

*Item 15. Table of Contents*

List the contents of the Statement of Additional Information, and, where useful, provide a cross-reference to related disclosure in the prospectus.

*Item 16. General Information and History*

If the Fund has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Fund's business or name occurred in connection with any bankruptcy, receivership, or similar proceeding or any other material reorganization, readjustment, or succession, briefly describe the nature and results of the same.

*Item 17. Investment Objective and Policies*

1. Describe clearly and concisely the investment policies of the Fund. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, the Fund should refer to the prospectus when necessary to clarify the additional information called for by this Item.

2. Concisely describe any fundamental policy of the Fund not described in the prospectus with respect to each of the following activities:

- The issuance of senior securities;
- short sales, purchases on margin, and the writing of put and call options;

c. the borrowing of money (describe briefly any fundamental policy that limits the Fund's ability to borrow money, and state the purpose for which the proceeds will be used);

d. the underwriting of securities of other issuers (include any fundamental policy concerning the acquisition of restricted securities, *i.e.*, securities that must be registered under the Securities Act before they may be offered or sold to the public);

e. the concentration of investments in a particular industry or groups of industries;

f. the purchase or sale of real estate and real estate mortgage loans;

g. the purchase or sale of commodities or commodity contracts, including futures contracts;

h. the making of loans (for purposes of this item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities; however, the term "loan" includes the loaning of cash or portfolio securities to any person); and

i. any other policy that the Fund deems fundamental.

*Instructions.*

1. For purposes of this Item, the term "fundamental policy" is defined as any policy that the Fund has deemed to be fundamental or that may not be changed without the approval of a majority of the Fund's outstanding voting securities.

2. If the Fund reserves freedom of action with respect to any of the foregoing activities (other than the activity described in paragraph e), it must disclose the maximum percentage

of assets to be devoted to the particular activity.

3. Describe fully any significant investment policies of the Fund not described in the prospectus that are not deemed fundamental and that may be changed without the approval of the holders of a majority of the voting securities (e.g., investing for control of management, investing in foreign securities, or arbitrage activities).

*Instruction.* The Fund should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

4. Briefly explain any significant change in the Fund's portfolio turnover rates over the last two fiscal years. If the Fund anticipates a significant change in the portfolio turnover rate from that reported under caption k of Item 4.1 for its most recent fiscal year, so state. In the case of a new registration, the Fund should state its policy with respect to portfolio turnover.

*Item 18. Management*

*General Instructions.*

1. For purposes of this Item 18, the terms below have the following meanings:

a. The term "family of investment companies" means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term "fund complex" means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in Section 152 of the Internal Revenue Code [26 U.S.C. 152].

d. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age	Position(s) Held with Registrant	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Number of Portfolios in Fund Complex Overseen by Director	Other Directorships Held by Director

*Instructions.*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless

the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex,

identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

*Instruction.* When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

*Instruction.* Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Fund listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. a. Briefly describe the leadership structure of the Fund's board, including whether the chairman of the board is an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of

the Fund, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

b. Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

- (1) A concise statement of the functions of the committee;
- (2) The members of the committee;
- (3) The number of committee meetings held during the last fiscal year; and

(4) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. a. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

- (1) The Fund;
- (2) An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or

is under common control with an investment adviser or principal underwriter of the Fund;

(3) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(4) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

b. Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6.a of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

*Instruction.* When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

- a. In the Fund; and
- b. On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with Rule 16a-1(a)(2) under the Exchange Act.

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the

following ranges: None, \$1-\$10,000, \$10,001-\$50,000, \$50,001-\$100,000, or over \$100,000.

8. For each director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, and his immediate family members, furnish the information required by the following table as to

each class of securities owned beneficially or of record in:

- a. An investment adviser or principal underwriter of the Fund; or
- b. person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director	Company	Title of Class	Value of Securities	Percent of Class



*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a “beneficial owner” of a security if he is a “beneficial owner” under either Rule 13d-3 or Rule 16a-1(a)(2) under the Exchange Act.

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company’s relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds \$120,000, of each director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

a. An investment adviser or principal underwriter of the Fund; or

b. A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds \$120,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds \$120,000 and to which any of the following persons was a party:

a. The Fund;

b. An officer of the Fund;

c. An investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

d. An officer of an investment company, or a person that would be an investment company but for the exclusions provided by Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

e. An investment adviser or principal underwriter of the Fund;

f. An officer of an investment adviser or principal underwriter of the Fund;

g. A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

h. An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years

prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed “material” within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10.a through 10.h of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage,

or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds \$120,000, of any director who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10.a through 10.h of this Item 18. Relationships include:

a. Payments for property or services to or from any person specified in paragraphs 10.a through 10.h of this Item 18;

b. Provision of legal services to any person specified in paragraphs 10.a through 10.h of this Item 18;

c. Provision of investment banking services to any person specified in paragraphs 10.a through 10.h of this Item 18, other than as a participating underwriter in a syndicate; and

d. Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11.a through 11.c of this Item 18.

*Instructions.*

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10.a through 10.h of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic

payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10.a through 10.h of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds \$120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10.a through 10.h of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10.a through 10.h of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11.a of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10.a through 10.h of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage,

or insurance policy with a person specified in paragraphs 10.a through 10.h of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, as defined in Section 2(a)(19) of the Investment Company Act and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

a. The company;

b. The individual who serves or has served as a director of the company and the period of service as director;

c. The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph 12.b of this Item 18 holds or held office and the office held; and

d. The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. In the case of a Fund that is not a business development company, provide the following for all directors of the Fund, all members of the advisory board of the Fund, and for each of the three highest paid officers or any affiliated person of the Fund with aggregate compensation from the Fund for the most recently completed fiscal year in excess of \$60,000 ("Compensated Persons").

a. Furnish the information required by the following table:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position	Aggregate Compensation From Fund	Pension or Retirement Benefits Accrued As Part of Fund Expenses	Estimated Annual Benefits Upon Retirement	Total Compensation From Fund and Fund Complex Paid to Directors

*Instructions.*

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the

Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26

U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

b. Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (a) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

14. In the case of a Fund that is a business development company, provide the information required by Item 402 of Regulation S-K [17 CFR 229.402].

15. *Codes of Ethics.* Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 under the Investment Company Act and whether these codes of ethics permit personnel subject to the codes to invest in

securities, including securities that may be purchased or held by the Fund. Also, explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's internet site at <http://www.sec.gov>, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following email address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

*Instruction.* A Fund that is not required to adopt a code of ethics under Rule 17j-1 under the Investment Company Act is not required to respond to this Item.

16. Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of the Fund's shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act and the rules thereunder) of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Fund's website at a specified internet address; and (ii) on the Commission's website at <http://www.sec.gov>.

*Instructions.*

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within 3 business days of receipt of

the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1-4 under the Investment Company Act and discloses that the Fund's proxy voting record is available on or through its website.

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

#### *Item 19. Control Persons and Principal Holders of Securities*

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the registration statement or amendment to it.

1. State the name and address of each person who controls the Fund, and briefly explain the effect of such control on the voting rights of other shareholders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, disclose the state or other jurisdiction under the laws of which it is organized. List all parents of each control person.

*Instructions.*

1. The term "control" is defined in the instruction to Item 9.3 of this Form.

2. A Fund that is controlled by its adviser or underwriter(s) before the effective date of the registration statement need not respond to this Item if, immediately after the public offering, there will be no control person.

2. State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own of record or beneficially five percent or more of any class of the Fund's outstanding equity securities.

*Instructions.*

1. Calculate the percentages on the basis of the amount of common stock outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment, or succession, indicate, to the extent practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If, to the knowledge of the Fund or any principal underwriter of its securities, five percent or more of any class of voting securities of the Fund are or will be held subject to any voting trust or other similar agreement, disclose this fact.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and disclose the respective percentage owned in each manner.

3. Disclose all equity securities of the Fund owned by all officers, directors, and members of the advisory board of the Fund as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than one percent of the class, a statement to that effect is sufficient.

#### *Item 20. Investment Advisory and Other Services*

1. Furnish the following information about each investment adviser:

a. The names of all controlling persons, the basis of such control, and, if material, the business history of any organization that controls the adviser;

b. the names of any affiliated person of the Fund who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Fund and/or with the investment adviser; and

*Instruction.* If an affiliated person of the Fund, either alone or together with others, is a controlling person of the investment adviser, the Fund must disclose that fact but need not supply the specific amount of percentage of the outstanding voting securities of the investment adviser that are owned by the controlling person.

c. the method of computing the advisory fee payable by the Fund, including:

(1) The total dollar amounts paid to the adviser by the Fund under the investment advisory contract for the last three fiscal years;

(2) if applicable, any credits that reduced the advisory fee for any of the last fiscal years; and

(3) any expense limitation provision.

#### *Instructions.*

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Where the Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

2. Concisely describe all services performed for or on behalf of the Fund that are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

3. Describe briefly all fees, expenses, and costs of the Fund that are to be paid by persons other than the investment adviser or the Fund, and identify such persons.

4. Summarize any management-related service contract under which services are provided to the Fund that is not otherwise disclosed in response to an Item of this Form and may be of interest to a purchaser of the Fund's securities, indicating the parties to the contract and the total dollars paid, and by whom, for the past three years.

#### *Instructions.*

1. A "management-related service contract" includes any agreement whereby another person contracts with the Fund to keep, prepare, and/or file accounts, books, records, or other documents that the Fund may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following: (1) Any contract with the Fund to provide investment advice; (2) any agreement to act as custodian, transfer agent, or dividend-paying agent; and (3) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. No information is required about the service of mailing proxies or periodic reports to shareholders of the Fund.

3. In summarizing the substantive provisions of a management-related service contract, include: (1) The name of the person providing the service; (2) any direct or indirect relationship of that person with the Fund, its investment adviser, or its principal

underwriter; (3) the nature of the services provided; and (4) the basis of the compensation paid for the last three fiscal years.

5. If any person (other than a bona fide director, officer, member of an advisory board, employee of the Fund, or a person named as an investment adviser in response to paragraph 1 of this Item), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Fund or the investment adviser of the Fund with respect to the desirability of the Fund's investing in, purchasing, or selling securities or other property, or is empowered to determine which securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration from the Fund, furnish the following information:

a. The name of the person;

b. a description of the nature of the arrangement and the advice or information given; and

c. any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how and by whom such remuneration was paid for the last three fiscal years.

*Instruction.* No information is required with respect to any of the following:

1. Persons whose advice was furnished solely through uniform publications distributed to subscribers;

2. persons who furnished only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Fund;

3. a company that is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the Investment Company Act;

4. any person the character and amount of whose compensation for such service must be approved by a court; or

5. such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

6. Furnish the name and principal business address of each of the Fund's custodians, the nature of the business of each such person, and a general description of the services performed by each.

7. Furnish the name and principal business address of the Fund's independent public accountant, and provide a general description of the services performed by such person.

8. If an affiliated person of the Fund, or an affiliated person of an affiliated person of the Fund, acts as custodian, transfer agent, or dividend-paying agent for the Fund, furnish a description of the services performed by that person and the basis for remuneration (e.g., the method by which that person's fee is calculated).

#### *Item 21. Portfolio Managers*

1. *Other Accounts Managed.* If a Portfolio Manager required to be identified in response to Item 9.1.c is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

- a. The Portfolio Manager's name;
- b. The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:
  - (1) Registered investment companies;
  - (2) Other pooled investment vehicles; and
  - (3) Other accounts.
- c. For each of the categories in Item 21.1.b, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and
- d. A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to Item 21.1.b, on the other. This description would include, for example, material conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Fund and other accounts managed by the Portfolio Manager.

##### *Instructions.*

1. Provide the information required by Item 21.1 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily

responsible for the day-to-day management of the portfolio of an account, include the account in responding to Item 21.1.

2. *Compensation.* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 9.1.c. For each type of compensation (e.g., salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the Fund's pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Fund's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

##### *Instructions.*

1. Provide the information required by Item 21.2 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other accounts included in the response to Item 21.1.b. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with

respect to the Fund and other accounts, e.g., if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this must be disclosed.

3. *Ownership of Securities.* For each Portfolio Manager required to be identified in response to Item 9.1.c, state the dollar range of equity securities in the Fund beneficially owned by the Portfolio Manager using the following ranges: None; \$1–\$10,000; \$10,001–\$50,000; \$50,001–\$100,000; \$100,001–\$500,000; \$500,001–\$1,000,000; or over \$1,000,000.

##### *Instructions.*

1. Provide the information required by Item 21.3 as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with Rule 16a-1(a)(2) under the Exchange Act.

#### *Item 22. Brokerage Allocation and Other Practices*

1. Concisely describe how transactions in portfolio securities are or will be effected. Provide a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during the three most recent fiscal years. Concisely explain any material change in brokerage commissions paid by the Fund during the most recent fiscal year as compared to the two prior fiscal years.

2. a. State the total dollar amount, if any, of brokerage commissions paid by the Fund during the three most recent fiscal years to any broker that: (1) Is an affiliated person of the Fund; (2) is an affiliated person of an affiliated person of the Fund; or (3) has an affiliated person that is an affiliated person of the Fund, its investment adviser, or principal underwriter. In the case of an initial public offering, disclose whether or not the Fund intends to use any brokers described in this subparagraph, a. Identify each broker, and state the relationships that cause the broker to be identified in this Item.

b. State for each broker identified in response to paragraph 2.a of this Item:

- (1) The percentage of the Fund's aggregate brokerage commissions paid

to the broker during the most recent fiscal year; and

(2) the percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

c. Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph 2.a of this Item, state the reasons for the difference.

3. Describe briefly how brokers will be selected to effect securities transactions for the Fund and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

*Instructions.*

1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, specify the products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of the research services.

3. State whether persons acting on behalf of the Fund are authorized to pay a broker a commission in excess of that which another broker might have charged for effecting the same transaction because of the value of brokerage or research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all the services may be used by the investment adviser in connection with the Fund; or, if other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, concisely explain the policies and practices.

5. Funds should refer to Rule 17e-1 under the Investment Company Act with respect to securities transactions executed by exchange members.

4. If during the last fiscal year the Fund or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

5. If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its

regular brokers or dealers, as defined in Rule 10b-1 under the Investment Company Act, or their parents, identify those brokers or dealers, and state the value of the Fund's aggregate holdings of the securities of each subject issuer as of the close of the Fund's most recent fiscal year.

*Instruction.* The Fund need only disclose information with respect to the parent of a broker or dealer that derived more than fifteen percent of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser.

*Item 23. Tax Status*

Provide information about the Fund's tax status that is not required to be in the prospectus but that the Fund believes is of interest to investors, including, but not limited to, an explanation of the legal basis for the Fund's tax status. If the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. If not otherwise disclosed, concisely describe any special or unusual tax aspects of the Fund, e.g., taxes resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

*Item 24. Financial Statements*

Provide the financial statements of the Fund.

*Instructions.*

1. a. Furnish, in a separate section following the responses to the above items in Part B of the registration statement, the financial statements and schedules required by Regulation S-X [17 CFR part 210]. (See Section 210.3-18 and Sections 210.6-01 through 210.6-10 of Regulation S-X.)

b. A business development company that has had at least one fiscal year of operations need provide financial statements under Item 8.6.c of Part A only. A business development company with less than one fiscal year of operations should refer to Item 8.6.c of Part A and Instructions 1 and 2 thereunder in responding to this Item 24.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part B and included in Part C of the registration statement:

a. The statement of any subsidiary that is not a majority-owned subsidiary; and

b. Columns C and D of Schedule III [17 CFR 210.12-14].

3. In addition to the requirements of Rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act shall include in its initial registration statement under the Securities Act such additional financial statements and financial highlights (which need not be audited) as are necessary to make the financial statements and financial highlights included in the registration statement as of a date within 90 days prior to the date of filing.

4. Every annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder shall contain the following information:

a. The audited financial statements required by Regulation S-X for the periods specified by Regulation S-X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the five most recent fiscal years, with at least the most recent year audited;

c. unless shown elsewhere in the report as part of the financial statements required by a above, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom any officer or director of the company is an affiliated person;

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K [17 CFR 229.304];

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Fund and is available, without charge, upon request, and a toll-free (or collect) telephone number and email address, if any, for shareholders to use to request the SAI.

g. *Management's Discussion of Fund Performance.* Disclose the following information:

(1) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market

conditions and the investment strategies and techniques used by the Fund. The information presented may include tables, charts, and other graphical depictions.

(2) (A) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a \$10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the market price (or, if shares are not listed, the net asset value) of the Fund on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and sale was at the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds \$10,000.

2. *Multiple Class Funds.* The Fund can select which Class to include, consistent with the requirements of Instruction 3(a) to Item 4(b)(2) of Form N-1A.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 26(b)(1) of Form N-1A, except with respect to reinvestments of dividends and distributions, which must be calculated consistent with Item 4 of this Form. Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the sale of fund shares.

(C) *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum

sales load, and other charges deducted from payments, is deducted from the initial \$10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete sale that received the market price (or, if shares are not listed, the net asset value) on the last business day of the most recent fiscal year. For any other deferred sales load, repurchase fee, or withdrawal charge, assume that the deduction is in the amount(s) and at the time(s) that the sales load, repurchase fee, or withdrawal charge actually would have been deducted.

(D) *Dividends and Distributions.*

Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

(E) *Account Fees.* Reflect recurring fees that are charged to all accounts.

1. For any account fees that vary with the size of the account, assume a \$10,000 account size.

2. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by sale of the Fund's shares.

3. Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average market price, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

(F) *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

(G) *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

(H) *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

(I) *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

(J) *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

(K) *New Funds.* A New Fund is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N-2 (or the annual report) contains audited financial statements covering a period of at least 6 months.

(L) *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

1. Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under Section 2(a)(9) of the Investment Company Act;

2. The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

3. The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(3) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

h. If the Fund has filed a registration statement pursuant to General Instruction A.2:

(1) *Senior Securities.* Include the information required by Item 4.3.

(2) *Fee and Expense Table.* Include the information required by Item 3.1.

(3) *Share Price Data.* Include the information required by Item 8.5.

(4) *Unresolved Staff Comments.* If the Fund has received written comments from the Commission staff regarding its periodic or current reports under the Exchange Act or Investment Company



Act or its registration statement not less than 180 days before the end of its fiscal period to which the annual report relates, and such comments remain unresolved, disclose the substance of any such unresolved comments that the Fund believes are material. Such disclosure may provide other information including the position of the Fund with respect to any such comment.

5. Every report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder, except the annual report, shall contain the following information (which need not be audited):

a. The financial statements required by Regulation S-X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e-1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

b. the financial highlights required by Item 4.1 of this Form, for the period of the report as specified by subparagraph a of this instruction, and the most recent preceding fiscal year;

c. unless shown elsewhere in the report as part of the financial statements required by subparagraph a of this instruction, the aggregate remuneration paid by the company during the period covered by the report (1) to all directors and to all members of any advisory board for regular compensation; (2) to each director and to each member of an advisory board for special compensation; (3) to all officers; and (4) to each person of whom an officer or director of the company is an affiliated person; and

d. the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K.

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder shall contain the following information:

a. One or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories (e.g., type of security, industry sector, geographic region, credit quality, or maturity) showing the

percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (e.g., net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. If the Fund depicts portfolio holdings according to credit quality, it should include a description of how the credit quality of the holdings were determined, and if credit ratings, as defined in Section 3(a)(60) of the Exchange Act, assigned by a credit rating agency, as defined in Section 3(a)(61) of the Exchange Act, are used, explain how they were identified and selected. This description should be included near, or as part of, the graphical representation.

b. *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the SEC for the first and third quarters of each fiscal year as an exhibit to its reports on Form N-PORT; (ii) the Fund's Form N-PORT reports are available on the Commission's website at <http://www.sec.gov>; (iii) if the Fund makes the information on Form N-PORT available to shareholders on its website or upon request, a description of how the information may be obtained from the Fund.

c. A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (2) on the Fund's website, if applicable; and (3) on the Commission's website at <http://www.sec.gov>; and

d. A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; sending an email to a specified email address, if any; or on or through the Fund's website at a specified internet address; and (2) on the Commission's website at <http://www.sec.gov>.

e. If the Fund's board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's

approval. Include the following in the discussion:

(1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of the Fund's investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (e.g., pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(2) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating the Fund's brokerage.

f. Board approvals covered by Instruction 6.e to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6.e include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6.e. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract. If any factor enumerated in Instruction 6.e(1) to this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why the factor is not relevant.



g. Include on the front cover page or at the beginning of the annual or semi-annual report a statement to the following effect, if applicable:

Beginning on [date], as permitted by regulations adopted by the Securities and Exchange Commission, paper copies of the Fund's shareholder reports like this one will no longer be sent by mail, unless you specifically request paper copies of the reports from the Fund [or from your financial intermediary, such as a broker-dealer or bank]. Instead, the reports will be made available on a website, and you will be notified by mail each time a report is posted and provided with a website link to access the report.

If you already elected to receive shareholder reports electronically, you will not be affected by this change and you need not take any action. You may elect to receive shareholder reports and other communications from the Fund [or your financial intermediary] electronically by [insert instructions].

You may elect to receive all future reports in paper free of charge. You can inform the Fund [or your financial intermediary] that you wish to continue receiving paper copies of your shareholder reports by [insert instructions]. Your election to receive reports in paper will apply to all funds held with [the fund complex/your financial intermediary].

h. Disclose any information the Fund was required to disclose in a report on Form 8-K and that the Fund has not reported during the relevant period. If disclosure of such information is made under this instruction, it need not be repeated in a report on Form 8-K that would otherwise be required to be filed with respect to such information or in a subsequent annual or semi-annual report to shareholders.

i. A Fund that files a registration statement pursuant to General Instruction A.2, and includes in any annual or semi-annual report to shareholders or periodic report filed under the Exchange Act information not otherwise required to be included in the report in order to update the Fund's prospectus or SAI, must include a statement in the report identifying all information included for this purpose.

7. *Schedule IX—Summary schedule of investments in securities of unaffiliated issuers* [17 CFR 210.12–12C] may be included in the financial statements required under Instructions 4.a and 5.a of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12–12] if:

a. The Fund states in the report that the Fund's complete schedule of

investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number or sending an email to a specified email address, if any; (ii) on the Fund's website, if applicable; and (iii) on the Commission's website at <http://www.sec.gov>; and

b. whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

8. a. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N-CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number or sending an email to a specified email address, if any, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1–4 under the Investment Company Act and discloses

that the Fund's proxy voting record is available on or through its website.

9. See General Instruction F regarding Incorporation by Reference.

10. Every annual report filed under the Exchange Act by a business development company must contain the information required by Instructions 4.b and 4.h, and every periodic report filed under the Exchange Act by a business development company must include the information required by Instruction 6.i, if applicable.

## Part C—Other Information

### Item 25. *Financial Statements and Exhibits*

List all financial statements and exhibits filed as part of the registration statement.

1. Financial statements.

*Instruction.* Identify those financial statements that are included in Parts A and B of the registration statement.

2. Exhibits.

Subject to General Instruction F regarding incorporation by reference and Rule 483 under the Securities Act, file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by Rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

a. Copies of the charter as now in effect.

b. Copies of the existing bylaws or instruments corresponding thereto.

c. Copies of any voting trust agreement with respect to more than five percent of any class of equity securities of the Fund.

d. Copies of the constituent instruments defining the rights of the holders of the securities.

e. A copy of the document setting forth the Fund's dividend reinvestment plan, if any.

f. Copies of the constituent instruments defining the rights of the holders of long-term debt of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed (The instrument relating to any class of long-term debt of the Fund or any subsidiary need not be filed if the total amount of securities authorized thereunder amounts to less than two percent of the total assets of the Fund and its subsidiaries on a consolidated basis, and if the Fund files an agreement to furnish such copies to the Commission upon request.).

g. Copies of all investment advisory contracts relating to the management of the assets of the Fund.

h. Copies of each underwriting or distribution contract between the Fund and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers.

i. Copies of all bonus, profit sharing, pension, or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the Fund in their capacity as such (a reasonably detailed description of any plan that is not set forth in a formal document should be furnished).

j. Copies of all custodian agreements and depository contracts entered into in conformance with Section 17(f) of the Investment Company Act or rules thereunder with respect to securities and similar investments of the Fund, including the schedule of remuneration.

k. Copies of all other material contracts not made in the ordinary course of business that are to be performed in whole or in part at or after the date of filing the registration statement.

l. An opinion of counsel and consent to its use as to the legality of the securities being registered, indicating whether they will be legally issued, fully paid, and nonassessable.

m. If a non-resident director, officer, investment adviser, or expert named in the registration statement has executed a consent to service of process within the United States, a copy of that consent to service.

n. Copies of any other opinions, appraisals, or rulings, and consents to their use, relied on in preparing the registration statement, and consents to the use of accountants' reports relating to audited financial statements required by Section 7 of the Securities Act.

o. All financial statements omitted from Items 8.6 or 24.

p. Copies of any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter, or initial stockholders and written assurance from the promoters or initial stockholders that their purchases were made for investment purposes without any present intention of reselling.

q. Copies of the model plan used in the establishment of any retirement plan in conjunction with which the Fund offers its securities, any instructions to it, and any other documents making up the model plan (such form(s) should disclose the costs and fees charged in connection with the plan).

r. Copies of any codes of ethics adopted under Rule 17j-1 under the Investment Company Act and currently applicable to the Fund (*i.e.*, the codes of

the Fund and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Fund, state the reason (*e.g.*, the Fund is a Money Market Fund).

*Instructions.*

1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the registration statement. Exhibits required by paragraphs 2.h, 2.l, 2.n, and 2.o above need to be filed only as part of a Securities Act registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits. The reference shall include the form, file number and date of the previous filing, and the exhibit number (*i.e.*, exhibit 2.a, 2.b, etc.) under which the exhibit was previously filed.

2. A Fund need not file an exhibit as part of a post-effective amendment, if the exhibit has been filed in the Fund's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit, or unless the exhibit is a copy of a consent required by Section 7 of the Securities Act or is a financial statement omitted from Items 8.6 or 24. The reference to this exhibit shall include the number of the previous filing (*e.g.*, pre-effective amendment No. 1) where such exhibit was filed.

3. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed (1) only to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act or (2) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the Fund need not refile the exhibit as so amended. Any incomplete exhibit may not, however, be incorporated by reference into any subsequent filing under any Act administered by the Commission. If an exhibit required to be executed (*e.g.*, an underwriting agreement) is filed in final form, a copy of an executed copy shall be filed.

*Item 26. Marketing Arrangements*

Briefly describe any arrangements known to the Fund or to any person named in response to Item 5, or to any person specified in Item 19.2, made for any of the following purposes:

1. To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;
2. to stabilize the market for any of the securities to be offered; or
3. to hold each underwriter or dealer responsible for the distribution of his or her participation.

*Instruction.* If the answer to this Item is contained in an exhibit, the Item may be answered by cross-reference to the relevant paragraph(s) of the exhibit.

*Item 27. Other Expenses of Issuance and Distribution*

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions. If any of the securities being registered are to be offered for the account of securityholders, indicate the portion of expenses to be borne by securityholders.

*Instruction.* Insofar as practicable, separately itemize registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, rating agency fees, and legal and accounting fees. The information may be given subject to future contingencies. Provide estimates if the amounts of any items are not known.

*Item 28. Persons Controlled by or Under Common Control*

Furnish a list or diagram of all persons directly or indirectly controlled by, or under common control with, the Fund, and as to each of these persons indicate (1) if a company, the state or other jurisdiction under whose laws it is organized, and (2) the percentage of voting securities owned or other basis of control by the person, if any, immediately controlling it.

*Instructions.*

1. The list or diagram shall include the Fund and shall show clearly the relationship of each company named to the Fund and to other companies named. If the company is controlled by the direct ownership of its securities by two or more persons, so indicate by appropriate cross-reference.

2. Identify, by appropriate symbols: (1) Subsidiaries for which separate financial statements are filed; (2) subsidiaries included in the respective consolidated financial statements; (3)

subsidiaries included in the respective group financial statements filed for unconsolidated subsidiaries; and (4) other subsidiaries, indicating briefly why statements of these subsidiaries are not filed.

**Item 29. Number of Holders of Securities**

State in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the number of record holders of each class of securities of the Fund.

(1)	(2)
Title of Class	Number of Record Holders

**Item 30. Indemnification**

State the general effect of any contract, arrangement, or statute under which any director, officer, underwriter, or affiliated person of the Fund is insured or indemnified in any manner against any liability that may be incurred in such capacity, other than insurance provided by any member of the board of directors, officer, underwriter, or affiliated person for his or her own protection.

*Instruction.* In responding to this Item, the Fund should note the requirements of Rules 461(c) and 484 under the Securities Act and Section 17 of the Investment Company Act. (See Investment Company Act Rel. No. 11330 (Sept. 4, 1980) [45 FR 62423 (Sept. 19, 1980)] and Investment Company Act Rel. No. 7221 (June 9, 1972) [37 FR 12790 (June 29, 1972)].)

**Item 31. Business and Other Connections of Investment Adviser**

Describe briefly any other business, profession, vocation, or employment of a substantial nature in which each investment adviser of the Fund, and each director, executive officer, or partner of any such investment adviser, is or has been, at any time during the past two fiscal years, engaged for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

*Instructions.*

1. State the name and principal business address of any company with which any person specified above is connected in the capacity of director, officer, employee, partner, or trustee and the nature of the connection.

2. The names of investment advisory clients need not be provided.

3. For purposes of this Item, the term "executive officer" means the investment adviser's president, any other officer who performs a policy-

making function for the investment adviser in connection with its management of the closed-end fund, or any other person who performs a similar policy-making function for the investment adviser. Executive officers of subsidiaries of the investment adviser may be deemed executive officers of the investment adviser, if they perform such policy-making functions for the investment adviser.

**Item 32. Location of Accounts and Records**

Furnish the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by Section 31(a) of the Investment Company Act and the rules thereunder.

*Instruction.* The Fund may omit this information to the extent it is provided in its most recent report on Form N-CEN.

**Item 33. Management Services**

Furnish a summary of the substantive provisions of any management-related service contract not discussed in Part A or B of the registration statement (because the contract was not believed to be of interest to a purchaser of the Fund's securities), indicating the parties to the contract, the total dollars paid, and by whom, for the last three fiscal years.

*Instructions.*

1. The instructions to Item 20.4 of this Form shall also apply to this Item.

2. Information need not be provided for any service for which total payments of less than \$5,000 were made during each of the last three fiscal years.

**Item 34. Undertakings**

Furnish the following undertakings in substantially the following form in all registration statements filed under the Securities Act, as applicable:

1. An undertaking to suspend the offering of shares until the prospectus is amended if (1) subsequent to the effective date of its registration statement, the net asset value declines more than ten percent from its net asset value as of the effective date of the registration statement or (2) the net asset value increases to an amount greater than its net proceeds as stated in the prospectus.

2. An undertaking to file a post-effective amendment with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons, if the Fund proposes to raise its initial capital under Section 14(a)(3) of the Investment Company Act.

3. If the securities being registered are to be offered to existing shareholders pursuant to warrants or rights, and any securities not taken by shareholders are to be reoffered to the public, an undertaking to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by underwriters during the subscription period, the amount of unsubscribed securities to be purchased by underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters of the securities being registered is to be made on terms differing from those set forth on the cover page of the prospectus, the Fund shall undertake to file a post-effective amendment to set forth the terms of such offering.

4. If the securities are being registered in reliance on Rule 415 under the Securities Act, an undertaking:

a. To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

(1) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(2) to reflect in the prospectus any facts or events after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.

Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*Provided, however,* that paragraphs a(1), a(2), and a(3) of this section do not apply if the registration statement is filed pursuant to General Instruction A.2 of this Form and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed

with or furnished to the Commission by the Fund pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

b. that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof;

c. to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

d. that, for the purpose of determining liability under the Securities Act to any purchaser:

(1) If the Fund is relying on Rule 430B:

(A) Each prospectus filed by the Fund pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (x), or (xi) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date,

supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(2) if the Fund is subject to Rule 430C: Each prospectus filed pursuant to Rule 424(b) under the Securities Act as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

e. that for the purpose of determining liability of the Fund under the Securities Act to any purchaser in the initial distribution of securities:

The undersigned Fund undertakes that in a primary offering of securities of the undersigned Fund pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Fund will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned Fund relating to the offering required to be filed pursuant to Rules 424 under the Securities Act;

(2) free writing prospectus relating to the offering prepared by or on behalf of the undersigned Fund or used or referred to by the undersigned Funds;

(3) the portion of any other free writing prospectus or advertisement pursuant to Rule 482 under the Securities Act relating to the offering containing material information about the undersigned Fund or its securities provided by or on behalf of the undersigned Fund; and

(4) any other communication that is an offer in the offering made by the undersigned Fund to the purchaser.

5. If the Fund is filing a registration statement permitted by Rule 430A under the Securities Act, an undertaking that:

a. For the purpose of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Fund under Rule 424(b)(1) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

b. for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

6. *Filings Incorporating Subsequent Exchange Act Documents by Reference.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned Fund hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Fund's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference into the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

7. *Request for acceleration of effective date or filing of registration statement becoming effective upon filing.* Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act, or if a registration statement filed pursuant to General Instruction A.2 of this Form will become effective upon filing with the Commission pursuant to Rule 462(e) or (f) under the Securities Act, and:

a. Any provision or arrangement exists whereby the Fund may indemnify a director, officer or controlling person of the Fund against liabilities arising under the Securities Act, or

b. The underwriting agreement contains a provision whereby the Fund indemnifies the underwriter or controlling persons of the underwriter against such liabilities and a director, officer or controlling person of the Fund is such an underwriter or controlling

person thereof or a member of any firm which is such an underwriter, and

c. The benefits of such indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Fund pursuant to the foregoing provisions, or otherwise, the Fund has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Fund of expenses incurred or paid by a director, officer or controlling person of the Fund in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Fund will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

8. An undertaking to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any prospectus or Statement of Additional Information.

### Signatures

Pursuant to the requirements of the Securities Act of 1933 and/or the Investment Company Act of 1940, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, and State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.

Registrant

By \_\_\_\_\_

Signature

Title

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following person in the capacities and on the dates indicated.

Signature

Title

Date

40. Amend Form 24F-2 (referenced in § 274.24 of this chapter) by:

- a. Revising the first sentence of paragraph A.1. of the “INSTRUCTIONS” section; and
- b. Revising the first sentence of paragraph A.3. of the “INSTRUCTIONS” section.

The revisions read as follows:

**Note:** The text of Form 24F-2 does not, and these amendments will not, appear in the *Code of Federal Regulations*.

UNITED STATES

SECURITIES AND EXCHANGE  
COMMISSION

Washington, DC 20549

**FORM 24F-2**

**Annual Filing Under Rule 24f 2 of the  
Investment Company Act of 1940**

### INSTRUCTIONS

A. \* \* \*

1. This Form should be used by an open-end management investment company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c-3(b) of this chapter, face amount certificate company, or unit investment trust (“issuer”) for annual filings required by rule 24f-2 under the Investment Company Act of 1940 [15 U.S.C. 80a] (“Investment Company Act”). \* \* \*

\* \* \* \* \*

3. Pursuant to rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] this Form must be submitted in electronic format using the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. \* \* \*

\* \* \* \* \*

By the Commission.

Dated: March 20, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-05776 Filed 4-9-19; 8:45 am]

**BILLING CODE 8011-01-P**



# FEDERAL REGISTER

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## Part III

### Occupational Safety and Health Review Commission

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29 CFR Part 2200  
Rules of Procedure; Final Rule

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2200

#### Rules of Procedure

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Review Commission (“OSHRC” or “Commission”) is making comprehensive revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

**DATES:** These revised rules will take effect on June 10, 2019. They apply to all cases docketed on or after that date. They also apply to proceedings in cases pending on that date, except to the extent that their application would be infeasible or would work an injustice, in which event the present rules apply.

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, via telephone at 202–606–5410, or via email at [rbailley@oshrc.gov](mailto:rbailley@oshrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 7, 2018, the Commission published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPR). 83 FR 45366 (September 7, 2018). In that notice the Commission announced that it was considering comprehensive revisions to its procedural rules in light of technological advances, including implementation of the Commission’s electronic-filing system, and the evolution of practice before the Commission since the last comprehensive revision of its rules of procedure in 2005. The Commission expressed interest in recommended changes to any rule and announced that it was especially interested in whether: Rules on the computation of time should be simplified; electronic filing and service should be mandatory and, if so, what exceptions, if any, should be allowed; the definition of “affected employee” should be broadened; citing to Commission decisions as posted on the agency’s website should be allowed; the rule on the staying of a final order is not needed and should be eliminated; the requirement for agency approval of settlements should be narrowed or eliminated; the grounds for obtaining Commission review of interlocutory orders issued by its administrative law judges should be revised; protection of sensitive personal information should be broadened; and whether the threshold amount for cases referred for

mandatory settlement proceedings should be increased. The Commission thanks those who responded to the ANPR for their time and interest; the submitted comments were helpful and aided the Commission in formulating a number of these rule changes.

##### II. Revisions to Rules

Following an internal review of the rules and having considered all the comments submitted in response to the ANPR, the Commission has made comprehensive revisions to the procedural rules governing practice before the Commission. To aid the public in identifying the numerous revisions, the Commission will also publish on its website a “redline” version of the rules that will show the changes. Some of these revisions are technical and clarifying in nature. For example, cross-references to rules have been added throughout; all references to “mail,” “United States Mail,” and “U.S. Mail” have been changed to “U.S. Mail” for clarity and consistency; all references to “paper” have been changed to “document” to include both electronically-filed and conventionally-filed documents; and, in the interest of plain language, sentences have been rewritten to eliminate words such as “herein,” “therein,” and “thereafter,” among others. In addition, gender-neutral language is now used throughout the rules. To that end, gender-specific pronouns have been eliminated where possible. Finally, references to “unrepresented parties” have been changed to “self-represented parties” to recognize parties (excluding the Secretary) that are represented in Commission proceedings by one of their officers or managers.

Other changes have been made to make the rules easier to read and understand, particularly for self-represented parties. For example, Rule 52(f) has been broken into two subparts. In another example, a phrase in Rule 60 formerly read, “notice of the time, place, and nature of the first hearing shall be given to the parties and intervenors,” while the revised version reads, “when a hearing is first set, the Judge shall give the parties and intervenors notice of the time, place, and nature of the hearing.”

##### Subpart A—General Provisions

In the definition section, the definition of “authorized employee representative” has been revised to specify that it means a labor organization that represents affected employees who are members of the collective bargaining unit. This conforms the definition’s language with Rule 22(b).

The Commission has amended Rule 4, Computing time, to facilitate and clarify practice before the Commission. Previously, time periods of 11 days or more were calculated based on calendar days, but time periods of less than 11 days were calculated based on working days. This bifurcated approach to calculating time periods, which was reported as confusing and problematic, particularly for self-represented parties, has been eliminated. Most time periods are now based on calendar days—referred to simply as “days”—and have been adjusted so that the actual amount of time provided is either the same as, or more than, before. Some periods, however, remain specified in “working days” when that is how the corresponding period is expressed in specific sections of the Occupational Safety and Health Act of 1970 (“Act”), 29 U.S.C. 651 *et seq.*

The elimination of the “less than 11 days” method of computing time is consistent with a 2009 change to Federal Rule of Civil Procedure 6, Computing and Extending Time; Time for Motion Papers, that eliminated a similar provision. As part of that revision, most 10-day periods in the Federal Rules of Civil Procedure were expanded to 14 (calendar) days. Similarly, throughout the revised rules of procedure, the Commission has expanded most, but not all, of the existing time periods of less than 11 days. Ogletree Deakins Nash Smoak & Stewart, P.C. (“Ogletree”) recommended further adopting the 2009 changes to the federal rules by changing all 10- and 20-day periods to periods measured in weeks, specifically 14 and 21 days. Ogletree pointed out that whole-week periods provide the advantage that the final day will always fall on the same day of the week as the event that triggered the period, so deadlines will always fall on weekdays. Where practicable and not otherwise governed by statute, the periods in the Commission rules have been similarly revised.

To further facilitate time calculation and practice before the Commission, the Commission has revised Rule 7, Service, notice, and posting, to use plain language to explain service methods and when service is deemed accomplished. For clarity and consistency, the rules have been revised throughout to begin stated time periods based on “service,” rather than on “receipt” or “transmission.” In certain rules, however, “receipt” was retained as the beginning of a time period where “receipt” is stated in the corresponding section of the Act. The Commission has also consolidated all requirements for

the service of show cause orders in new paragraph (o), to which cross-references have been added throughout the rules.

The Commission requested comment on whether it should make electronic filing mandatory. Four commenters (Ogletree; the Occupational Safety & Health Law Project (“OSH Law Project”); Conn Maciel Carey LLP; and the Occupational Safety and Health Division, Office of the Solicitor, U.S. Department of Labor (“SOL”)) recommended that it be mandatory. Three of those commenters (Ogletree, Conn Maciel Carey, and SOL) suggested creating an exception for self-represented parties and one (Ogletree) requested an exception for privileged materials or materials filed under seal. One commenter (James Sassaman) recommended keeping the current non-mandatory filing system, noting that the Commission cannot assist e-filing parties and not every practitioner has an information technology department at the ready.

The Commission has decided to make e-filing mandatory for parties represented by attorneys or non-attorney representatives. Self-represented parties have the option of using the Commission’s E-File System or filing documents by conventional means. Once e-filing has been elected, the party must continue to file all documents electronically, but, because the Commission cannot guarantee the confidentiality of documents filed in the E-File System, confidential and privileged documents cannot be filed electronically. Conforming revisions have been made throughout where necessary, particularly to Rule 6, Record address, Rule 7, Service, notice, and posting, and Rule 8, Filing.

The Commission also requested comment on whether to permit citation to Commission decisions that are posted on the agency’s website. Four commenters (James Sassaman, the OSH Law Project, Ogletree, and Conn Maciel Carey) suggested that this be allowed. Rule 12, References to cases, has been revised to allow citations to the website and specifies the citation format that should be followed, depending on whether the PDF version (which shows page numbers) or the HTML version (which does not show page numbers) of the case is being cited. Specifically, because the HTML version does not show page numbers, when citing that version the party must identify the paragraph number (or numbers) of the cited text.

#### *Subpart B—Parties and Representatives*

The Commission has amended Rule 20, Party status, to specify that an

individual who, at the time of the violation, met the definition of “affected employee” set forth in Rule 1(e) and was employed by the cited employer, but who, as the case progresses, is no longer employed by the cited employer, is permitted to elect party status. This revision to the rule is in conformity with the Commission’s decision in *S. Scrap Materials Co.*, 23 BNA OSHC 1596, 1613 n.15 (No. 94–3393, 2011) (“[Rule 20(a)] does not preclude participation in OSHA proceedings by employees who, at the time of the hearing, are no longer employed by the cited employer.”).

In response to comments the Commission received on whether the definition of “affected employee” should be broadened, the Commission has revised Rule 21, Intervention; Appearance by non-parties. The OSH Law Project asked that the Commission broaden the definition of “affected employee” to include temporary or contract employees as well as workers who may be affected by exposures created or controlled by a cited employer, even if they are not directly employed by the cited employer. Four commenters (the Chamber of Commerce of the United States and the Associated General Contractors (“Chamber/AGC”), the Coalition of Workplace Safety (“CWS”), Ogletree, and Conn Maciel Carey) recommended that the Commission not broaden the definition. Conn Maciel Carey asserted that non-employees and those not working in areas affected by the citations could not reasonably provide better value to the litigation process than those employees actually exposed to the hazard. The other three commenters asserted that the employees referred to by the OSH Law Project could instead participate as intervenors, pursuant to Rule 21.

As the OSH Law Project pointed out, under the current definition of “affected employee” a worker not employed by the cited employer and not exposed to or without access to the cited hazard is unable to elect party status under Rule 20. In addition, although it seems clear that employees of a non-cited employer working on the worksite and/or exposed to hazards substantially similar to the cited hazard would be eligible to participate in the proceedings as intervenors in accordance with Rule 21—in that they would have an interest in the proceeding and would be able to assist in the determination of the issues in question—the rules did not require intervenor status to be granted.

The Commission has decided to retain the current definition of “affected employee” in Rule 1 and revise Rule 21 to clarify how an exposed employee can

meet the criteria set forth in that rule. The revision also requires intervenor status to be granted when the specified criteria are met.

The OSH Law Project also suggested that the Commission clarify in Rule 22, Representation of parties and intervenors, that employees may designate any person to represent their interests before the Commission. The Commission has revised the language to state that any party or intervenor may appear in person, through an attorney, or through any non-attorney representative.

Rule 23(b), Withdrawal of counsel, has been revised to require counsel or representatives of record who are withdrawing their appearance to provide current contact information for the client. This revision was made to ensure that clients continue to receive important communications from the Judge and the Commission.

#### *Subpart C—Pleadings and Motions*

In an effort to assist self-represented parties, the Commission has added a note to Rule 33, Notices of contest, to explain that, in extraordinary circumstances, an employer that fails to meet the 15-working day statutory deadline to file a notice of contest may seek relief from the resulting final order pursuant to Federal Rule of Civil Procedure 60, Relief from a Judgment or Order. The Commission has also reorganized the text of Rule 33 for clarity.

The Commission has made a number of revisions to Rule 40, Motions and requests, to clarify the requirements for how and when to make a motion and specify the form and content of motions. For example, the requirement that moving parties confer or make reasonable efforts to confer with all other parties before filing a motion in the existing rules has now been highlighted in a separate provision. Also, in light of SOL’s comment suggesting that the Commission incorporate Federal Rule of Civil Procedure 56, Summary Judgment, into its rules, guidance specifying that the provisions of Federal Rule of Civil Procedure 56 apply to motions for summary judgment before the Commission has been moved from Rule 61 to new paragraph (j) for clarity and consistency.

#### *Subpart D—Prehearing Procedures and Discovery*

Ogletree commented that paragraph (a)(1) of Rule 52, General provisions governing discovery, which specifies that the provisions of Federal Rule of Civil Procedure 26(a) do not apply to



Commission proceedings, has generated considerable confusion. Specifically, Ogletree asserts that there have been inconsistent rulings among the Commission's Judges regarding whether initial disclosures, written expert reports, and pretrial disclosures may be exchanged. The Commission has added language explaining that Judges may use scheduling orders to direct prehearing disclosures, including disclosure of expert testimony and written reports. In addition, new paragraph (a)(4) has been added to allow parties to make stipulations about discovery procedures. This paragraph mirrors the language in Federal Rule of Civil Procedure 29, Stipulations about Discovery Procedure.

SOL suggested that the Commission clarify whether the proportionality requirements for discovery specified in Federal Rule of Civil Procedure 26(b) apply to proceedings before the Commission. To improve clarity, paragraphs (b) and (c) of Rule 52 have been revised to conform to the Commission's rules to the 2015 amendments to the Federal Rules of Civil Procedure.

Both SOL and Ogletree suggested that Rule 54, Request for admissions, be revised to be consistent with the analogous Federal Rule of Civil Procedure 36(a). The Commission has revised Rule 54 to be consistent with Federal Rule of Civil Procedure 36(a), as tailored to Commission practice.

The Commission received comments from Conn Maciel Carey suggesting an increase in the permitted number of requests for admissions and interrogatories for cases involving numerous citation items. In the experience of the Commission's Judges, the parties are generally able to agree to more requested admissions or interrogatories as appropriate. Rule 54 and Rule 55, Interrogatories, have been revised to clarify that the number of requested admissions or interrogatories can exceed 25 upon agreement of the parties or by order of the Commission or the Judge.

For clarity, the Commission has streamlined Rule 56, Depositions. Edits have also been made for consistency with Federal Civil Rule of Procedure 30(b)(3). In addition, guidance regarding depositions formerly located in Rule 65 (Subpart E) has been relocated to Rule 56 for clarity and organizational consistency. The Commission has also made several revisions to clarify that parties cannot introduce audio or audiovisual depositions without a transcript of the introduced portion of the deposition.

Finally, the Commission has combined the subpoena provisions

formerly set forth in Rule 57 with the subpoena provisions set forth in Rule 65 so that all subpoena practice provisions will be in one rule. This results in the deletion of former Rule 57.

#### *Subpart E—Hearings*

The Commission has revised Rule 64, Failure to appear, to clarify the consequences of failing to appear at a hearing. If the Secretary fails to appear, the Judge will consider the Secretary to have abandoned the case. If the Respondent fails to appear, the Judge will deem the Respondent to have admitted the facts alleged and consented to the relief sought by the Secretary.

In addition to revising Rule 65 to include the subpoena provisions formerly set forth in Rule 57, the Commission has made clarifying edits throughout this section to explain the process of issuing, serving, revoking, or modifying a subpoena, as well as the consequences of failing to comply with a subpoena. SOL suggested that the Commission clarify that nationwide service of Commission subpoenas is permissible. Language has been added to paragraph (b) stating that a subpoena may be served anywhere in the United States or its territories and may command the production of documents or tangible things, and a person to attend, from any place in the United States or its territories.

Rule 68, Recusal of the Judge, formerly referred to the "disqualification" of the Judge. The Commission has revised this section to instead refer to the "recusal" of the Judge to reflect current parlance and remove any negative connotation suggested by the word "disqualification." The Commission has also added guidelines to clarify which situations may require the recusal of a Judge.

The Commission has added a provision to Rule 72, Objections, to conform the Commission's rules with language in Federal Rule of Evidence 103, Rulings on Evidence, specifying the circumstances in which a party need not continuously renew an objection or offer of proof.

Two commenters responded to the Commission's request for recommendations on revisions to Rule 73, Interlocutory review. Ogletree recommended deleting the phrase "and that immediate review of the ruling may materially expedite the final disposition of the proceedings," asserting that the phrase required the Commission to attempt to predict the effect of interlocutory review on future litigation in the proceedings. SOL recommended

leaving the rule unchanged. Based on the Commission's experience with interlocutory matters, the Commission has revised the requirements for granting interlocutory review. Most significantly, the Commission has deleted the phrase "about which there is substantial ground for difference of opinion" because under that language, cases in which the error is obvious may be construed as not meeting the criteria for interlocutory review. The rule has also been revised to make clear that the important question presented must control the outcome of the case for the Commission to review it on an interlocutory basis. Rather than delete the phrase "may materially expedite the final disposition of the proceedings," the Commission has instead revised it to replace "may" with "will." Finally, based on language in the Model Adjudication Rules adopted by the Administrative Conference of the United States in October 2018, the Commission has also added an alternative consideration to the "materially expedite" phrase: that subsequent review by the Commission may provide an inadequate remedy.

#### *Subpart F—Posthearing Procedures*

Revisions to Rule 90, Decisions and reports of Judges, clarify that after a Judge's decision has become a final order of the Commission, the Commission or the Judge may correct a clerical mistake or a mistake arising from oversight or omission under Federal Rule of Civil Procedure 60(a).

In Rule 91, Discretionary review, the Commission has sought to eliminate confusion regarding where to file petitions for discretionary review by revoking the part of the rule that allowed such petitions to be filed with the Judge during the 10-day period specified in Rule 90(b)(2). Under the revised rule, petitions can only be filed with the Executive Secretary. The Commission has also revised paragraph (f) to clarify that filing a petition for review with the Commission is required before seeking review of a Judge's decision in a U.S. Circuit Court of Appeals.

The Commission has revised Rule 92, Review by the Commission, in two ways. Revisions to paragraph (a) clarify that the Commission has complete discretion to decide which issues to consider on review. The Commission deleted the list of issues that are normally considered to avoid implying that there is any constraint on the Commissioners when deciding which cases or particular issues to review. Furthermore, the Commission ordinarily specifies which issues are to be

considered in a briefing notice, not in the direction for review. The language in paragraph (b) is rephrased to reflect that the Act does not restrict which cases the Commission can direct for review on a Commissioner's own motion and to explain what factors Commissioners typically consider when directing review on their own motion.

Revisions have been made to Rule 93, Briefs before the Commission, with respect to the sequence in which briefs are to be filed. These edits are made in the interest of fairness and track Federal Rule of Appellate Procedure 28.1.

Rule 94, Stay of final order, has been deleted because the Commission's jurisdiction under the Act terminates once there is a final order. *See* section 10(c) of the Act, 29 U.S.C. 659(c). Accordingly, the Commission cannot act on any motions for a stay of a final order.

The Commission has revised paragraph (d)(3) of Rule 95, Oral argument before the Commission, to reflect the Commission's practice of generally allowing counsel time for rebuttal. Counsel may use rebuttal time only to respond to the opposing counsel and are not permitted to reserve points of substance for presentation during rebuttal. Rules for allocating time to amicus curiae seeking to participate in the oral argument have been added to paragraph (k)(1) and specify that amicus curiae must generally share time with the party in whose interest the amicus curiae seeks to participate.

#### *Subpart G—Miscellaneous Provisions*

The Commission requested comment on whether the requirement for agency approval of settlements in Rule 100, Settlement, should be narrowed or eliminated. Ogletree suggested a series of revisions to clarify that the Commission does not approve the contents of settlement agreements but only hears procedural objections to them. The OSH Law Project asked that the Commission insist that the Secretary comply with section 6(e) of the Act, 29 U.S.C. 655(e), which requires the Secretary to publish a statement of reasons for settling a penalty in the **Federal Register**. SOL asked the Commission to clarify the length of time a settlement must be posted.

Rule 100 has been extensively revised to reflect that the Commission has no authority to approve the contents of settlement agreements. Under the revised rule, settlement agreements will not be submitted to the Commission or the Judge. Instead, in a joint submission, the parties will notify the Judge that a settlement has been reached and will specify certain information as required

by the revised rule. Although the Commission has never approved the contents of settlement agreements, this change to the rule should eliminate the past practice of parties requesting that the Commission correct errors in settlement agreements that had been "approved" by the Judge, often after the settlement had become a final order of the Commission. The revised rule clarifies that the parties can correct a mistake in the agreement themselves without having to ask the Commission to alter the record or take any other action. Once the parties correct the agreement themselves, the revised rule requires the employer to follow the posting rules so that employees are properly notified. As suggested by SOL, the revised rule also specifies the amount of time a settlement must be posted (14 days). Only if the employer fails to follow the posting rules, or if there is an objection by an employee, would the Secretary (or affected employee or authorized employee representative) need to seek relief from the Commission (under Federal Rule of Procedure 60, if the final order date has passed).

The only scenario in this regard in which there would be a need to request Commission action on a settled case is if the parties mistakenly notify the Judge that the case has been completely settled when in fact one or more citation items have not been settled. If the final order date has passed, requesting relief under Federal Rule of Civil Procedure 60 would be required to litigate the remaining unsettled items. In an attempt to prevent such errors, the revised rule requires parties to include in the notification of settlement a list of the contested items that have been settled as well as a list of any items that remain to be decided.

The revisions also specify that if party status has been elected under Rule 20, certification is required that the party was afforded an opportunity to provide input on all matters pertaining to the settlement before the agreement was finalized. This revision is in accordance with the Commission's decision in *Boise Cascade Corp.* that employees must have an "opportunity to provide input on all matters pertaining to the settlement before the agreement is finalized." 14 BNA OSHC 1993, 1997 (No. 89-3087, 1991).

The revisions made to Rule 100 are in accordance with federal practice. The Federal Rules of Civil Procedure require parties who have settled a matter to file settlement agreements only in limited circumstances (such as class actions, shareholder derivative actions, unincorporated association class

member actions, and receiver actions). Federal Rule of Civil Procedure 41(a), Voluntary Dismissal of Actions, allows the plaintiff or stipulating parties to dismiss an action without a court order. Federal district courts only retain jurisdiction to enforce a settlement agreement if a court order of dismissal contains a provision that the court retains jurisdiction or if the terms of the settlement agreement are incorporated in the order. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

The Commission has revised paragraph (c) of Rule 103, Expedited proceeding, to delete the clause allowing Judges to order daily transcripts because doing so is financially burdensome and because Judges have discretion to make the appropriate rulings necessary to expedite proceedings.

Finally, the Commission has revised Rule 106, Amendment to rules, to allow the public, including stakeholders, to email suggestions for revisions to the rules of procedure.

#### *Subpart H—Settlement Part*

The Commission specifically requested comment on whether the threshold amount for cases referred for mandatory settlement proceedings in Rule 120, Settlement procedure, should be increased. Two commenters, Ogletree and Conn Maciel Carey, asked that the threshold amount not be increased. They explained that mandatory settlement proceedings have been a great success and recommended against making fewer cases eligible for the program. SOL proposed increasing the threshold amount to account for recent and future changes in the statutory maximum for OSHA penalties. It recommended increasing the amount to \$185,000 and proportionately increasing that amount every three years to maintain the same or similar ratio to the maximum penalty for willful or repeat violations.

In light of the increasing statutory maximum penalty amounts for willful and repeat violations required by the Inflation Adjustment Act of 2015, the Commission has determined that it would be an inefficient use of resources to maintain the current threshold amount for cases referred for mandatory settlement proceedings. As the maximum penalty amounts increase, a single willful or repeat violation would make a case eligible for mandatory settlement. This would result in too many cases being assigned to mandatory settlement, taking too much time away from other cases and increasing travel expenses for the Commission's Judges. Regarding the comments submitted by

Ogletree and Conn Maciel Carey, the Commission points out that parties can always ask to participate in voluntary settlement proceedings in the event that their case no longer meets the eligibility requirements for mandatory settlement.

Accordingly, paragraph (b)(1) has been revised to set the threshold amount to \$185,000. The rule also specifies that this threshold amount will be periodically and proportionately adjusted upon consideration of the penalty increases required by the Inflation Adjustment Act. Rather than revise the rules every time the threshold amount is increased, the rule directs parties to the Commission website to find the adjusted threshold penalty amount.

The Commission has also revised the rules governing mandatory settlement proceedings in paragraph (b)(3) to reflect current practice. The paragraph describes the varied methods and broad discretion of the Settlement Judge when conducting a settlement conference. The confidentiality of settlement discussions will be strictly maintained; the only exception is the rare circumstance in which disclosure is required by applicable law or public policy, and the revised rules reflect that limited exception. The OSH Law Project commented that the Commission's current confidentiality rule is too broad and that factual information disclosed during settlement discussions is treated as confidential, a view which appears to read the rule too broadly. The Commission has added language to paragraph (d)(3)(iv) to clarify that factual information disclosed in the settlement proceeding may be used in litigation if also obtained through appropriate discovery or subpoena. Finally, the timing and duration of the settlement process is amended to more accurately reflect current practice.

#### *Subpart M—Simplified Proceedings*

The Commission's revisions to the rules governing Simplified Proceedings are made largely for clarity, ease of understanding, and to conform the rules to current Commission practice. Rule 200, Purpose, and Rule 209(e), Oral and written argument at the hearing, have been revised to specify that the Judge may either allow or require post-hearing briefs. Rule 204, Discontinuance of Simplified Proceedings, has been revised to specify that the Judge may deny a motion to discontinue simplified proceedings filed less than 30 days before a scheduled hearing date. Rule 209(c), Evidence, has been revised to allow parties to stipulate that the Federal Rules of Evidence will apply in whole or in part, though generally the

Federal Rules of Evidence do not control the admission of evidence in simplified proceedings. Finally Rule 209(f), Judge's decision, has been revised to give Judges 60 days to issue a written decision.

### **III. Statutory and Executive Order Reviews**

*Executive Orders 12866, 13132, 13563, and the Unfunded Mandates Reform Act of 1995:* OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, E.O. 13563 or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

*Regulatory Flexibility Act:* Pursuant to 5 U.S.C. 605(a), a regulatory flexibility analysis is not required because these rules concern "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" under 5 U.S.C. 553(b).

*Paperwork Reduction Act of 1995:* OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

*Congressional Review Act:* These revisions do not constitute a "rule," as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to "agency organization, procedure, or practice" that do not "substantially affect the rights or obligations of non-agency parties."

#### **List of Subjects in 29 CFR Part 2200**

Administrative practice and procedure, Hearing and appeal procedures.

Dated: March 28, 2019.

**Heather L. MacDougall**,  
Chairman.

**Cynthia L. Attwood**,  
Commissioner.

**James J. Sullivan**,  
Commissioner.

■ For the reasons discussed in the preamble, the Occupational Safety and Health Review Commission revises 29 CFR part 2200 to read as follows:

### **PART 2200—RULES OF PROCEDURE**

#### **Subpart A—General Provisions**

Sec.

- 2200.1 Definitions.
- 2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure; construction.
- 2200.3 Use of gender and number.
- 2200.4 Computing time.
- 2200.5 Extension of time.
- 2200.6 Record address.

- 2200.7 Service, notice, and posting.
- 2200.8 Filing.
- 2200.9 Consolidation.
- 2200.10 Severance.
- 2200.11 [Reserved]
- 2200.12 References to cases.

#### **Subpart B—Parties and Representatives**

- 2200.20 Party status.
- 2200.21 Intervention; appearance by non-parties.
- 2200.22 Representation of parties and intervenors.
- 2200.23 Appearances and withdrawals.
- 2200.24 Brief of an amicus curiae.

#### **Subpart C—Pleadings and Motions**

- 2200.30 General rules.
- 2200.31 Caption; titles of cases.
- 2200.32 Signing of pleadings and motions.
- 2200.33 Notices of contest.
- 2200.34 Employer contests.
- 2200.35 Disclosure of corporate parents, subsidiaries, and affiliates.
- 2200.36 [Reserved]
- 2200.37 Petitions for modification of the abatement period.
- 2200.38 Employee contests.
- 2200.39 Statement of position.
- 2200.40 Motions and requests.
- 2200.41 [Reserved]

#### **Subpart D—Prehearing Procedures and Discovery**

- 2200.50 [Reserved]
- 2200.51 Prehearing conferences and orders.
- 2200.52 General provisions governing discovery.
- 2200.53 Production of documents and things.
- 2200.54 Request for admissions.
- 2200.55 Interrogatories.
- 2200.56 Depositions.
- 2200.57 [Reserved]

#### **Subpart E—Hearings**

- 2200.60 Notice of hearing; location.
- 2200.61 Submission without hearing.
- 2200.62 Postponement of hearing.
- 2200.63 Stay of proceedings.
- 2200.64 Failure to appear.
- 2200.65 Issuance of subpoenas; petitions to revoke or modify subpoenas; payment of witness fees and mileage; right to inspect or copy data.
- 2200.66 Transcript of testimony.
- 2200.67 Duties and powers of judges.
- 2200.68 Recusal of the judge.
- 2200.69 Examination of witnesses.
- 2200.70 Exhibits.
- 2200.71 Rules of evidence.
- 2200.72 Objections.
- 2200.73 Interlocutory review.
- 2200.74 Filing of briefs and proposed findings with the Judge; oral argument at the hearing.

#### **Subpart F—Posthearing Procedures**

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**Authority:** 29 U.S.C. 661(g), unless otherwise noted.

Section 2200.96 is also issued under 28 U.S.C. 2112(a).

#### Subpart A—General Provisions

##### § 2200.1 Definitions.

As used in this part:

(a) *Act* means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678.

(b) *Commission, person, employer, and employee* have the meanings set forth in section 3 of the Act, 29 U.S.C. 652.

(c) *Secretary* means the Secretary of Labor or the Secretary's duly authorized representative.

(d) *Executive Secretary* means the Executive Secretary of the Commission.

(e) *Affected employee* means an employee of a cited employer who is exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices, or operations.

(f) *Judge* means an Administrative Law Judge appointed by the Chairman of the Commission pursuant to section 12(j) of the Act, 29 U.S.C. 661(j), as amended by Public Law 95–251, 92 Stat. 183, 184 (1978).

(g) *Authorized employee representative* means a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees who are members of the collective bargaining unit.

(h) *Representative* means any person, including an authorized employee representative, authorized by a party or intervenor to represent it in a proceeding.

(i) *Citation* means a written communication issued by the Secretary to an employer pursuant to section 9(a) of the Act, 29 U.S.C. 658(a).

(j) *Notification of proposed penalty* means a written communication issued by the Secretary to an employer pursuant to section 10(a) or (b) of the Act, 29 U.S.C. 659(a) or (b).

(k) *Day* means a calendar day.

(l) *Working day* means all days except Saturdays, Sundays, or Federal holidays.

(m) *Proceeding* means any proceeding before the Commission or before a Judge.

(n) *Pleadings* are complaints and answers filed under § 2200.34, statements of reasons and employers' responses filed under § 2200.38, and petitions for modification of abatement and objecting parties' responses filed under § 2200.37. A motion is not a pleading within the meaning of these rules.

##### § 2200.2 Scope of rules; applicability of Federal Rules of Civil Procedure; construction.

(a) *Scope.* These rules shall govern all proceedings before the Commission and its Judges.

(b) *Applicability of Federal Rules of Civil Procedure.* In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure.

(c) *Construction.* These rules shall be construed to secure an expeditious, just, and inexpensive determination of every case.

##### § 2200.3 Use of gender and number.

(a) *Number.* Words importing the singular number may extend and be applied to the plural and vice versa.

(b) *Gender.* Words importing the masculine or feminine gender apply equally to all genders.

##### § 2200.4 Computing time.

(a) *Computation.* The following rules apply in computing any time period specified in these rules or by any order that does not specify a method of computing time.

(1) *Period stated in days or longer unit.* When the period is stated in days or a longer unit of time:

(i) Exclude the day of the event that triggers the period;

(ii) Count every day, including intermediate Saturdays, Sundays, and Federal holidays; and

(iii) Include the last day of the period, but if the last day is a Saturday, Sunday, or Federal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

(2) *Period stated in working days.* When the period is stated in working days, count every day except intermediate Saturdays, Sundays, and Federal holidays.

(3) *Operating status of receiving Commission office.* Unless the Commission or the Judge orders otherwise, if the receiving Commission office is closed on the last day for filing due to inclement weather or other circumstance, then the time for filing is extended to the first day the office is open that is not a Saturday, Sunday, or Federal holiday.

(4) *“Last day” defined.* Unless a different time is set by a rule or order, the last day ends:

(i) For documents filed electronically in the Commission's E-File System, at 11:59 p.m. in the time zone of the receiving Commission office; and

(ii) For filing by other means, when the receiving Commission office is scheduled to close.

(5) *“Next day” defined.* The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *“Federal holiday” defined.*

“Federal holiday” means:

(i) The day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and,

(ii) Any day declared a holiday by the President or Congress.

(b) *Additional time after service by U.S. Mail.* When a party may or must act within a specified time after service and service is made by U.S. Mail under § 2200.7, 3 days are added after the period would otherwise expire under § 2200.4(a). *Provided, however,* that this provision does not apply to computing the time for filing a petition for discretionary review under § 2200.91(b).

##### § 2200.5 Extension of time.

The Commission or the Judge on their own initiative or, upon motion of a

party, for good cause shown, may enlarge or shorten any time prescribed by these rules or prescribed by an order. All such motions shall be in writing and shall conform with § 2200.40, but, in exigent circumstances in a case pending before a Judge, an oral request may be made and shall be followed by a written motion filed with the Judge within such time as the Judge prescribes. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, in exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

#### § 2200.6 Record address.

(a) Every pleading or document filed by any party or intervenor shall contain the name, current address, telephone number, and email address of the party or intervenor's representative or, if there is no representative, the party or intervenor's own name, current address, telephone number, and email address. Any change in such information shall be communicated promptly in writing to the Judge, or the Executive Secretary if no Judge has been assigned, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived its right to notice and service under these rules.

(b) Representatives, parties, and intervenors who file case documents electronically in the Commission's E-File System pursuant to § 2200.8(c) are responsible for both maintaining a valid email address associated with the registered account and regularly monitoring that email address.

#### § 2200.7 Service, notice, and posting.

(a) *When service is required.* At the time of filing pleadings or other documents, the filer shall serve a copy on every other party or intervenor. Every document relating to discovery required to be served on a party shall be served on all parties and intervenors. Every order required by its terms to be served shall be served on all parties and intervenors.

(b) *Service on represented parties or intervenors.* Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative unless the Judge

orders service on the party or intervenor.

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by the following methods:

(1) *Commission's E-File System.* For electronically-filed documents, service shall be deemed accomplished by the simultaneous service of the document by email on all other parties and intervenors in the case, together with proof of service pursuant to paragraph (d) of this section.

(2) *U.S. Mail.* Service shall be deemed accomplished upon depositing the item in the U.S. Mail with first-class or higher class (such as priority mail) postage pre-paid addressed to the recipient's record address provided pursuant to § 2200.6.

(3) *Commercial or other personal delivery.* Service shall be deemed accomplished upon delivery to the recipient's record address provided pursuant to § 2200.6.

(4) *Facsimile transmission.* Service by facsimile transmission shall be deemed accomplished upon delivery to the receiving facsimile machine. The party serving a document by facsimile is responsible for the successful transmission and legibility of documents intended to be served.

(d) *Proof of service.* Service shall be documented by a written certificate of service setting forth the date and manner of service. The certificate of service shall be filed with the pleading or document.

(e) *Proof of posting.* Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) *Service on represented employees.* Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in a manner prescribed in paragraph (c) of this section.

(g) *Service on unrepresented employees.* In the event there are affected employees who are not represented by an authorized employee representative, the employer shall post, immediately upon receipt, the docketing notice for the notice of contest or petition for modification of the abatement period. The posting shall be at or near where the citation is required to be posted pursuant to section 9(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 658(b), and 29 CFR 1903.16. The employer shall post:

(1) A copy of the notice of contest or petition for modification of the abatement period;

(2) A notice informing the affected employees of their right to party status; and

(3) A notice informing the affected employees of the availability of all pleadings for inspection and copying at reasonable times.

(4)(i) A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its Rules of Procedure. Notice of intent to participate must be filed no later than 14 days before the hearing. Any notice of intent to participate should be sent to: Occupational Safety and Health Review Commission, Office of the Executive Secretary, One Lafayette Centre, 1120 20th Street, NW, Suite 980, Washington, DC 20036-3457. All pleadings relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

(ii) Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(h) *Special service requirements; authorized employee representatives.* The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest or petition for modification of the abatement period.

(i) *Notice of hearing to unrepresented employees.* Immediately upon receipt, a copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted pursuant to section 9(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 658(b), and 29 CFR 1903.16.

(j) *Notice of hearing to represented employees.* Immediately upon receipt of the notice of the hearing to be held before the Judge, the employer shall

serve a copy of the notice on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section. The employer need not serve the notice of hearing, as stated above, if on or before the date the hearing notice is received, the authorized employee representative has entered an appearance in conformance with §§ 2200.22 and 2200.23.

(k) *Employee contest; service on other employees.* (1) Where a notice of contest with respect to the reasonableness of the abatement period is filed under § 2200.38 by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented affected employee shall serve the following documents on the authorized employee representative:

(i) The notice of contest with respect to the reasonableness of the abatement period; and

(ii) A copy of the Secretary's statement of reasons, filed in conformance with § 2200.38(b).

(2) Service on the authorized employee representative shall be in the manner prescribed in paragraph (c) of this section. The unrepresented affected employee shall file proof of such service.

(l) *Employee contest; Service on employer.* Where a notice of contest with respect to the reasonableness of the abatement period is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support of the notice of contest shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) *Employee contest; Service on other authorized employee representatives.* An authorized employee representative who files a notice of contest with respect to the reasonableness of the abatement period shall be responsible for serving any other authorized employee representative whose members are affected employees in the manner prescribed in paragraph (c) of this section.

(n) *Duration of posting.* Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

(o) *Service of show cause orders—(1) Service on parties and intervenors using Commission's E-File System.* Service of show cause orders shall be deemed completed by service through the

Commission's E-File System on a representative who has entered an appearance for a party or intervenor under § 2200.23 or on a self-represented party or intervenor who has elected service through the Commission's E-File System. *See also* § 2200.101(a).

(2) *Service on self-represented parties or intervenors not using the Commission's E-File System.* In addition to the service methods permitted by § 2200.7(c), the Commission or the Judge shall serve a show cause order on a party or intervenor who is self-represented and is not using the Commission's E-File System by certified mail or by any other method (including commercial delivery service) that provides confirmation of delivery to the addressee's record address provided under § 2200.6.

#### § 2200.8 Filing.

(a) *What to file—(1) General.* All documents required to be served on a party or intervenor shall be filed either before service or within a reasonable time after service.

(2) *Discovery documents.* Discovery documents generated pursuant to §§ 2200.52 through 2200.56 shall not be filed with the Commission or the Judge. Filing and retention of such discovery documents shall comply with § 2200.52(i) and (j).

(b) *Where to file.* Prior to assignment of a case to a Judge, all documents shall be filed electronically in the Commission's E-File System or with the Executive Secretary at One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036–3457. After the assignment of the case to a Judge, all documents shall be filed electronically in the Commission's E-File System or with the Judge at the address given in the notice of assignment. After the docketing of the Judge's report, all documents shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(4).

(c) *Electronic filing with the Commission—(1) Mandatory e-filing.* Parties and intervenors who are represented by an attorney or non-attorney representative, as provided in § 2200.22, must file documents electronically in the Commission's E-File System by following the instructions on the Commission's website ([www.oshrc.gov](http://www.oshrc.gov)), unless the documents are exempt from e-filing under paragraph (c)(5) of this section.

(2) *Non-mandatory e-filing.* (i) Self-represented parties or intervenors, as provided in § 2200.22, may file documents electronically in the Commission's E-File System by following the instructions on the

Commission's website ([www.oshrc.gov](http://www.oshrc.gov)). Self-represented parties or intervenors who elect e-filing must file all documents electronically, unless excused by the Commission or the Judge or the documents are exempt from e-filing under paragraph (c)(5) of this section.

(ii) Self-represented parties or intervenors who do not elect e-filing must file documents by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, or facsimile transmission as described in paragraph (d) of this section.

(3) If technical difficulties prevent the successful submission of electronically filed documents, the e-filer should refer to the instructions for electronic filing on the Commission's website ([www.oshrc.gov](http://www.oshrc.gov)).

(4) Documents filed electronically in the Commission's E-File System may contain an electronic signature of the filer which will have the same legal effect, validity, and enforceability as if signed manually. The term "electronic signature" means an electronic symbol or process attached to or logically associated with a contact or other record and executed or adopted by a person with the intent to sign the document.

(5) *Confidential and privileged documents.* The following documents must not be filed electronically in the Commission's E-File System:

(i) Documents that may not be released to the public because the information is covered by a protective order or has been placed "under seal" pursuant to § 2200.52(d) and (e).

(ii) Documents submitted for *in camera* inspection by the Commission or the Judge, including material for which a privilege is claimed. Claims regarding privileged information must comply with § 2200.52(d).

(iii) Confidential settlement documents filed with the Judge pursuant to settlement procedures pursuant to § 2200.120.

(iv) Applications for subpoenas made *ex parte* pursuant to § 2200.65.

(6) *Sensitive information.* Unless the Commission or the Judge orders otherwise, all sensitive information in documents filed electronically in the Commission's E-File System must be redacted pursuant to paragraph (d)(5) of this section.

(7) *Date of filing.* The date of filing for documents filed electronically is the day that the complete document is successfully submitted in the Commission's E-File System pursuant to Rule 4(a)(4)(i). Electronic filing shall be completed by following the instructions

on the Commission's website ([www.oshrc.gov](http://www.oshrc.gov)).

(8) *Timeliness.* Representatives and self-represented parties and intervenors bear the sole responsibility for ensuring that a filing is timely made.

(9) *Certificate of service.* Proof of service shall accompany each document filed in the Commission's E-File System. The certificate of service shall certify simultaneous service of the document by email on all other parties and intervenors in the case. It is the responsibility of the filing party to retain records showing the date of transmission, including receipts.

(d) *Documents that are not filed in the Commission's E-File System; alternative filing methods—(1) How to file.*

Documents may be filed by postage-prepaid first class or higher class U.S. Mail, commercial delivery service, personal delivery, electronic transmission, or facsimile transmission.

(2) *Number of copies.* Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

(3) *Filing date.* (i) Except for the documents listed in paragraph (d)(3)(ii) of this section, if filing is by U.S. first class mail (or higher class mail, such as priority mail), then filing is deemed completed upon depositing the material in the U.S. Mail. If filing is by any other means (e.g., personal delivery, commercial delivery service, or facsimile transmission) then filing is deemed completed upon receipt by the Commission.

(ii) Filing is completed upon receipt by the Commission for petitions for interlocutory review (§ 2200.73), petitions for discretionary review (§ 2200.91), and EAJA applications (§ 2204.301).

(iii) Representatives and self-represented parties and intervenors bear the sole responsibility for ensuring that a filing is timely made.

(4) *Certificate of service.* A certificate of service shall accompany each document filed. The certificate shall set forth the dates and manner of filing and service.

(5) *Sensitive information.* Unless the Commission or the Judge orders otherwise, in any filing with the Commission, information that is sensitive (e.g., Social Security numbers, driver's license numbers, passport numbers, taxpayer-identification numbers, birthdates, mother's maiden names, names of minors, an individual's physical personal address, financial account numbers) but not privileged shall be redacted. Parties shall exercise caution when filing medical records, medical treatment records, medical

diagnosis records, employment history, and individual financial information, and shall redact or exclude materials unnecessary to the case.

(6) *Privileged information.* Claims regarding privileged information shall comply with § 2200.52(d).

#### § 2200.9 Consolidation.

Cases may be consolidated on the motion of any party conforming to § 2200.40, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact or in such other circumstances as justice or the administration of the Act require.

#### § 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor conforming to § 2200.40, where a showing of good cause has been made by the party or intervenor, the Commission or the Judge may order any proceeding severed with respect to some or all claims or parties.

#### § 2200.11 [Reserved]

#### § 2200.12 References to cases.

(a) *Citing decisions by Commission and Judges—(1) Generally.* Parties citing decisions by the Commission should include in the citation the name of the employer, the OSHRC docket number, the year of the decision, and a citation to a print or electronic reference source. Citations to Commission and ALJ decisions published on the Commission's website ([www.oshrc.gov](http://www.oshrc.gov)) are also accepted. For example,

(i) *Print:*

(A) *Hackensack Steel Corp.*, 20 BNA OSHC 1387, 1388 (No. 97–0755, 2003).

(B) *Hackensack Steel Corp.*, 2002–2004 CCH OSHD ¶ 32,690, p. 51,558 (No. 97–0755, 2003).

(ii) *Electronic:*

(A) *Hackensack Steel Corp.*, No. 97–0755, 2003 WL 22232017, at \*4 (OSHRC Sept. 25, 2003).

(B) *Hackensack Steel Corp.*, No. 97–0755, 2003 LEXIS 450392, at \*2 (OSHRC Sept. 25, 2003).

(iii) *Commission website* ([www.oshrc.gov](http://www.oshrc.gov)):

(A) PDF versions of cases should be cited as follows and identify the relevant page number: *Jacobs Field Servs. N. Am.*, No. 10–2659, at 5 (OSHRC 2015).

(B) HTML versions of cases should be cited as follows and identify the relevant paragraph number: *Jacobs Field Servs. N. Am.*, No. 10–2659, at ¶ 9 (OSHRC 2015).

(2) *Parenthetical statements.* When citing the decision of a Judge, the digest of an opinion, or the opinion of a single Commissioner, a parenthetical

statement identifying that the decision is non-precedential (e.g., “ALJ”) must be included. For example, *Rust Engineering Co.*, 1984 CCH OSHD ¶ 27,023 (No. 79–2090, 1984) (view of Chairman \_\_\_), *vacating direction for review of 1980 CCH OSHD ¶ 24,269* (1980) (ALJ) (digest).

(b) *References to court decisions.* (1) Citation to court decisions should be to the official reporter whenever possible. For example:

(i) *W.G. Yates & Sons Constr. Co. v. OSHRC*, 459 F.3d 604, 608–09 (5th Cir. 2006).

(ii) *Martin v. OSHRC (CF & I Steel Corp.)*, 499 U.S. 144, 150–51 (1991).

(2) *Name of employer to be indicated.* When a court decision is cited in which the first-listed party on each side is either the Secretary of Labor (or the name of a particular Secretary of Labor), the Commission, or a labor union, the citation should include in parenthesis the name of the employer in the Commission proceeding. For example, *Donovan v. Allied Industrial Workers (Archer Daniels Midland Co.)*, 760 F.2d 783 (7th Cir. 1985); *Donovan v. OSHRC (Mobil Oil Corp.)*, 713 F. 2d 918 (2d Cir. 1983).

### Subpart B—Parties and Representatives

#### § 2200.20 Party status.

(a) *Affected employees.* (1) Affected employees and authorized employee representatives may elect party status concerning any matter in which the Act confers a right to participate. The election shall be accomplished by filing a written notice of election at least 14 days before the hearing. A notice of election filed less than 14 days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

(2) A notice of election shall be served on all other parties in accordance with § 2200.7.

(b) *Employees no longer employed by cited employer.* An employee of a cited employer who was exposed to or had access to the hazard arising out of the allegedly violative circumstances, conditions, practices, or operations and who is no longer employed by the cited employer is permitted to participate as a party.

(c) *Employee contest.* (1) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party



status by a notice filed at least 14 days before the hearing.

(2) A notice of election shall be served on all other parties in accordance with § 2200.7.

**§ 2200.21 Intervention; appearance by non-parties.**

(a) *When allowed.* A petition for leave to intervene may be filed at any time prior to 14 days before commencement of the hearing. A petition filed less than 14 days prior to the commencement of the hearing will be denied unless good cause is shown for not timely filing the petition. A petition shall be served on all parties in accordance with § 2200.7.

(b) *Requirements of petition.* (1) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unduly delay the proceeding.

(2) If the petitioner is an employee who is not employed by the cited employer but who performed work at the cited worksite, the petition, in addition to the requirements of paragraph (b)(1) of this section, shall set forth material facts sufficient to demonstrate that the petitioner was exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices, or operations.

(c) *Ruling on petition.* (1) For petitions filed by an employee, as defined in paragraph (b)(2) of this section, the Commission or the Judge shall grant the petition for intervention.

(2) For all other petitions, the Commission or the Judge may grant a petition for intervention that meets the requirements of paragraph (b)(1) of this section.

(3) An order granting a petition shall specify the extent and terms of an intervenor's participation in the proceedings.

**§ 2200.22 Representation of parties and intervenors.**

(a) *Representation.* Any party or intervenor may appear in person, through an attorney, or through any non-attorney representative. A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for itself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(b) *Affected employees in collective bargaining unit.* Where an authorized employee representative (see

§ 2200.1(g)) elects to participate as a party, affected employees who are members of the collective bargaining unit may not separately elect party status. If the authorized employee representative does not elect party status, affected employees who are members of the collective bargaining unit may elect party status in the same manner as affected employees who are not members of the collective bargaining unit. See paragraph (c) of this section.

(c) *Affected employees not in collective bargaining unit.* Affected employees who are not members of a collective bargaining unit may elect party status under § 2200.20(a). If more than one employee so elects, the Judge shall provide for them to be treated as one party.

(d) *Control of proceeding.* A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

**§ 2200.23 Appearances and withdrawals.**

(a) *Entry of appearance—(1) General.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor in accordance with paragraph (a)(2) of this section or subsequently by filing an entry of appearance in accordance with paragraph (a)(3) of this section.

(2) *Appearance in first document or pleading.* If the first document filed on behalf of a party or intervenor is signed by a representative, the representative shall be recognized as representing that party. No separate entry of appearance by the representative is necessary, provided the document contains the information required by § 2200.6.

(3) *Subsequent appearance.* Where a representative has not previously appeared on behalf of a party or intervenor, the representative shall file an entry of appearance with the Executive Secretary, or Judge if the case has been assigned. The entry of appearance shall be signed by the representative and contain the information required by § 2200.6.

(b) *Withdrawal of counsel.* Any counsel or representatives of record desiring to withdraw their appearance, or any parties desiring to withdraw the appearance of their counsel or representatives of record, must file a motion conforming with § 2200.40 with the Commission or the Judge requesting leave to withdraw, showing that prior notice of the motion has been given by the counsel or representative or party to the client or counsel or representative, as the case may be, and providing current contact information for the

client, including street address, email address, and phone number. The motion of counsel to withdraw may, in the discretion of the Commission or the Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party or intervenor.

**§ 2200.24 Brief of an amicus curiae.**

The brief of an amicus curiae may be filed only by leave of the Commission or the Judge. The brief may be conditionally filed with the motion for leave conforming to § 2200.40. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support unless the Commission or the Judge, for good cause shown, grants leave for later filing. In that event, the Commission or the Judge may specify within what period an opposing party may answer. The brief of an amicus curiae shall conform to § 2200.74 or § 2200.93.

**Subpart C—Pleadings and Motions**

**§ 2200.30 General rules.**

(a) *Format.* Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, with typeface of text being no smaller than 12-point and typeface of footnotes being no smaller than 11-point, on letter size opaque paper (8½ inches by 11 inches). All margins shall be 1½ inches. Pleadings and other documents shall be fastened without the use of staples at the upper left corner.

(b) *Clarity.* Each allegation or response of a pleading or motion shall be simple, concise, and direct.

(c) *Separation claims.* Each allegation or response shall be made in separate numbered paragraphs. Each paragraph shall be limited as far as practicable to a statement of a single set of circumstances.

(d) *Adoption by reference.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of the pleading for all purposes.

(e) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative



statements. A party may state as many separate claims or defenses as it has regardless of consistency. All statements shall be made subject to the signature requirements of § 2200.32.

(f) *Form of pleadings, motions, and other documents.* Any pleading, motion, or other document shall contain a caption complying with § 2200.31 and a signature complying with § 2200.32. The form and content of motions shall conform with § 2200.40.

(g) *Burden of persuasion.* The rules of pleading established by this subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(h) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does not comply with the requirements of this subpart.

#### § 2200.31 Caption; titles of cases.

(a) *Notice of contest cases.* Cases initiated by a notice of contest shall be titled:

Secretary of Labor,

Complainant,

v.

(Name of Employer),

Respondent.

(b) *Petitions for modification of abatement period.* Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer),

Petitioner,

v.

Secretary of Labor,

Respondent.

(c) *Location of title.* The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) *Docket number.* The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

#### § 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by the representative that the representative is authorized to represent the party or parties on whose behalf the pleading is filed. The

signature of a representative or party also constitutes a certificate by the representative that the representative has read the pleading, motion, or other document, that to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not included for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other document is signed in violation of this rule, such signing party or its representative shall be subject to the sanctions set forth in § 2200.101 or § 2200.104. A signature by a party representative constitutes a representation by the representative that the representative understands that the rules and orders of the Commission and its Judges apply equally to attorney and non-attorney representatives.

#### § 2200.33 Notices of contest.

Within 15 working days after receipt of any of the following notices, the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the contesting party and copies of all other documents or records relevant to the contest:

(a) Notification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, 29 U.S.C. 659(a); or

(b) Notification that the employer wishes to contest a notice of a failure to abate or a proposed penalty under section 10(b) of the Act, 29 U.S.C. 659(b); or

(c) A notice of contest filed by an employee or representative of employees with respect to the reasonableness of the abatement period under section 10(c) of the Act, 29 U.S.C. 659(c).

**Note 1 to § 2200.33:** Failure to meet the 15-working day deadline to file a notice of contest results in the citation or notification of failure to abate becoming a final order of the Commission. Under extraordinary circumstances, the cited employer, an affected employee, or an authorized employee representative may seek relief from the final order pursuant to Federal Rule of Civil Procedure 60, by promptly filing a request for such relief with the Commission's Executive Secretary, One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036-3457. *See Brancifort Builders, Inc.*, 9 BNA OSHC 2113, 2116-17 (1981).

#### § 2200.34 Employer contests.

(a) *Complaint.* (1) The Secretary shall file a complaint with the Commission no later than 21 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(i) The basis for jurisdiction;

(ii) The time, location, place, and circumstances of each such alleged violation; and

(iii) The considerations upon which the period for abatement and the proposed penalty of each such alleged violation are based.

(3) Where the Secretary seeks in the complaint to amend the citation or proposed penalty, the Secretary shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) *Answer.* (1) Within 21 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(3) The answer shall include all affirmative defenses being asserted. Such affirmative defenses include, but are not limited to, "infeasibility," "unpreventable employee misconduct," and "greater hazard."

(4) The failure to raise an affirmative defense in the answer may result in the party being prohibited from raising the defense at a later stage in the proceeding, unless the Judge finds that the party has asserted the defense as soon as practicable.

(c) *Motions filed in lieu of an answer.* A motion filed in lieu of an answer pursuant to this subpart shall be filed no later than 21 days after service of the complaint. The form and content of the motion shall comply with § 2200.40.

#### § 2200.35 Disclosure of corporate parents, subsidiaries, and affiliates.

(a) *General.* All answers, petitions for modification of abatement period, or other initial pleadings filed under these rules by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable.

(b) *Failure to disclose.* The Commission or the Judge in its discretion may refuse to accept for filing an answer or other initial pleading that

lacks the disclosure declaration required by this paragraph. A party that fails to file an adequate declaration may be held in default after being given an opportunity to show cause why it should not be held in default. All show cause orders issued by the Commission or the Judge shall be served in a manner prescribed in § 2200.7(o).

(c) *Continuing duty to disclose.* A party subject to the disclosure requirement of this paragraph has a continuing duty to notify the Commission or the Judge of any change in the information on the disclosure declaration until the Commission issues a final order disposing of the proceeding.

#### **§ 2200.36 [Reserved]**

#### **§ 2200.37 Petitions for modification of the abatement period.**

(a) *Grounds for modifying abatement date.* An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) *Contents of petition.* A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) *When and where filed; posting requirement; responses to petition.* A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all

affected employees will have notice of the petition or near each location where the violation occurred. The petition shall remain posted for a period of 10 working days.

(2) Affected employees or the representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within 10 working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or the Secretary's duly authorized agent shall have the authority to approve any uncontested petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10(a) and (c) of the Act, 29 U.S.C. 659(a) and (c).

(4) The Secretary or the Secretary's authorized representative shall not exercise the Secretary's approval power until the expiration of 15 working days from the date the petition was posted pursuant to paragraphs (c)(1) and (2) of this section by the employer.

(d) *Contested petitions.* Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The Secretary shall forward the petition, citation, and any objections to the Commission within 10 working days after the expiration of the 15 working day period set out in paragraph (c)(4) of this section.

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in § 2200.103 of this Part.

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of section 10(c) of the Act, 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Where the petitioner is a corporation, it shall file a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable, within 10 working days after service of the Commission docketing notice of the petition for modification of the abatement date. Service of the filed declaration on the other parties and intervenors shall be accomplished in a manner prescribed in § 2200.7(c). The

requirements set forth in § 2200.35(b) through (d) shall apply.

(5) Each objecting party shall file a response setting forth the reasons for opposing the abatement date requested in the petition, within 10 working days after service of the Commission docketing notice of the petition for modification of the abatement date. Service of the response on the other parties and intervenors shall be accomplished in a manner prescribed in § 2200.7(c).

#### **§ 2200.38 Employee contests.**

(a) *Secretary's statement of reasons.* Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 14 days from receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by the Secretary is not unreasonable.

(b) *Response to Secretary's statement.* Not later than 14 days after service of the Secretary's statement, referred to in paragraph (a) of this section, the contesting affected employee or authorized employee representative shall file a response. Service of the filed statement on the other parties and intervenors shall be accomplished in a manner prescribed in § 2200.7(c).

(c) *Expedited proceedings.* All contests under this section shall be handled as expedited proceedings as provided for in § 2200.103.

#### **§ 2200.39 Statement of position.**

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard. The Judge may order the filing of a statement of position.

#### **§ 2200.40 Motions and requests.**

(a) *How to make.* An application or request for an order must be made by written motion. A motion shall not be included in another pleading or document, such as a brief or petition for discretionary review, but shall be made in a separate document. In exigent circumstances in cases pending before a Judge, an oral motion may be made during an off-the-record telephone conference if the motion is subsequently reduced to writing and filed within such time as the judge prescribes.

(b) *Form of motions.* All motions shall contain a caption complying with § 2200.31 and a signature complying with § 2200.32. Requests for orders that

are presented in any other form, such as by a business letter or by an email, shall not be considered or granted.

(c) *Content of motions.* A motion shall contain a clear and plain statement of the relief sought and state with particularity the grounds for seeking the order. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of the motion or a response.

(d) *Duty to confer.* Prior to filing a motion, the moving party shall confer or make reasonable efforts to confer with all other parties and shall state in the motion the efforts undertaken to confer. The motion shall also state if any other party opposes or does not oppose the motion.

(e) *Proposed order for procedural motions.* All procedural motions shall be accompanied by a proposed order that would grant the relief requested in the motion. A procedural motion may be ruled upon prior to the expiration of the time for response.

(f) *Oral motions.* Oral motions may be made during a hearing and shall be included in the transcript, if a transcript is being made.

(g) *When to make.* (1) A motion filed in lieu of an answer pursuant to § 2200.34(c) shall be filed no later than 21 days after service of the complaint.

(2) Motions shall be made as soon as the grounds for the motion are known. A party is not required to raise by motion any matter that the party has previously included in any pleading as defined in § 2200.1(n), unless the party seeks a ruling on the previously pleaded matter prior to the hearing on the merits.

(3) A motion to postpone a hearing shall comply with § 2200.62.

(h) *Responses.* Any party or intervenor upon whom a motion has been served shall file a response within 14 days from service of the motion.

(i) *Reconsideration.* A party adversely affected by a ruling on any motion may file a motion for reconsideration within 7 days of service of the ruling.

(j) *Summary judgment motions.* The provisions of Federal Rule of Civil Procedure 56 apply to motions for summary judgment.

#### § 2200.41 [Reserved]

### Subpart D—Prehearing Procedures and Discovery

#### § 2200.50 [Reserved]

#### § 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge may, upon the Judge's discretion, consult with the attorneys, non-attorney

party representatives, and any self-represented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30 days after the filing of the answer, enter a scheduling order that limits the time:

(i) To join other parties and to amend the pleadings;

(ii) To file and hear motions; and

(iii) To complete discovery.

(2) The scheduling order also may include:

(i) The date or dates for conferences before hearing, a final prehearing conference, and hearing; and

(ii) Any other matters appropriate to the circumstances of the case.

(b) *Prehearing conference.* In addition to the prehearing procedures set forth in Federal Rule of Civil Procedure 16, the Judge may, upon the Judge's own initiative or on the motion of a party, direct the parties to confer among themselves to consider settlement, stipulation of facts, or any other matter that may expedite the hearing.

(c) *Compliance.* Parties must fully prepare for a useful discussion of all procedural and substantive issues involved in prehearing conferences and shall participate in such conferences in good faith. Parties failing to do so may be subject to sanctions under §§ 2200.101 and 2200.104.

#### § 2200.52 General provisions governing discovery.

(a) *General*—(1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or the Judge, obtain discovery by one or more of the following methods:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes to the extent provided in § 2200.53;

(ii) Requests for admission to the extent provided in § 2200.54; and

(iii) Interrogatories to the extent provided in § 2200.55.

(iv) Discovery is not available under these rules through depositions except to the extent provided in § 2200.56.

(v) In the absence of a specific provision, discovery procedures shall be in accordance with the Federal Rules of Civil Procedure, except that the provisions of Federal Rule of Civil Procedure 26(a) do not apply to Commission proceedings. This exception does not preclude any prehearing disclosures (including disclosure of expert testimony and written reports) directed in a scheduling order entered under § 2200.51.

(2) *Time for discovery.* A party may initiate all forms of discovery in

conformity with these Rules at any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss. Discovery shall be initiated early enough to permit completion of discovery no later than 14 days prior to the date set for hearing, unless the Judge orders otherwise.

(3) *Service of discovery documents.*

Every document relating to discovery required to be served on a party shall be served on all parties.

(4) *Stipulations about discovery procedures.* Unless the Commission or the Judge orders otherwise, the parties may stipulate that:

(i) A deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition; and

(ii) Other procedures governing or limiting discovery may be modified—but a stipulation extending the time for any form of discovery must be approved by the Commission or the Judge if it would interfere with the time set forth for completing discovery, for hearing a motion, or for hearing.

(b) *Scope of discovery.* The information or response sought through discovery may concern any matter that is not privileged and that is relevant to the subject matter involved in the pending case and proportional to the needs of the case, considering the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(c) *Limitations.* The frequency or extent of the discovery methods provided by these rules may be limited by the Commission or the Judge if it is determined that:

(1) The discovery sought is unreasonably cumulative or duplicative, or it is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information sought by discovery in the action; or

(3) The proposed discovery is outside the scope permitted by paragraph (b) of this section.

(d) *Privilege*—(1) *Claims of privilege.* The initial claim of privilege shall specify the privilege claimed and the general nature of the material for which the privilege is claimed. In response to

an order from the Commission or the Judge, or in response to a motion to compel, the claim shall: Identify the information that would be disclosed; set forth the privilege that is claimed; and allege the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions, or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order or by a motion that the allegedly privileged information be received and the claim ruled upon in camera, that is, with the record and hearing room closed to the public, or ex parte, that is, without the participation of parties and their representatives. The Judge may enter an order and impose terms and conditions on the Judge's examination of the claim as justice may require, including an order designed to ensure that the allegedly privileged information not be disclosed until after the examination is completed.

(2) *Upholding or rejecting claims of privilege.* If the Judge upholds the claim of privilege, the Judge may order and impose terms and conditions as justice may require, including a protective order. If the Judge overrules the claim, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

(3) *Resolving claims of privilege outside of discovery proceedings.* A Judge may utilize the procedures set forth in paragraphs (d) and (e) of this section outside of discovery proceedings, including during the hearing.

(e) *Protective orders.* In connection with any discovery procedures and where a showing of good cause has been made, the Commission or the Judge may make any order including, but not limited to, one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons

designated by the Commission or the Judge;

(6) That a deposition after being sealed be opened only by order of the Commission or the Judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the Judge.

(f) *Failure to cooperate; motions to compel; sanctions—*(1) *Motions to compel discovery.* A party may file a motion conforming to § 2200.40 for an order compelling discovery when another party refuses or obstructs discovery. In considering a motion to compel, the Judge shall treat an evasive or incomplete answer as a failure to answer.

(2) *Sanctions.* If a party fails to comply with an order compelling discovery, the Judge may enter an order to redress the failure. Such order may issue upon the initiative of a Judge, after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party conforming to § 2200.40. The order may include any sanction stated in Federal Rule of Civil Procedure 37, including the following:

- (i) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;
- (ii) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses or prohibiting it from introducing designated matters in evidence;
- (iii) An order striking pleadings or parts of pleadings or staying further proceedings until the order is obeyed; and
- (iv) An order dismissing the action or proceeding or any part of the action or proceeding or rendering a judgment by default against the disobedient party.

(g) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be used in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice, the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

(h) *Show cause orders.* All show cause orders issued by the Commission or the Judge under paragraph (f) of this section

shall be served in a manner prescribed in § 2200.7(o).

(i) *Supplementation of responses.* A party that has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information subsequently acquired, except as follows:

(1) A party is under a duty to promptly supplement the response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty to promptly amend a prior response if the party obtains information upon the basis of which:

(i) The party knows that the response was incorrect when made; or

(ii) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

(j) *Filing of discovery.* Requests for production or inspection under § 2200.53, requests for admission under § 2200.54 and responses to requests for admission, interrogatories under § 2200.55 and the answers to interrogatories, and depositions under § 2200.56 shall be served upon other counsel or parties, but shall not be filed with the Commission or the Judge. The party responsible for service of the discovery material shall retain the original and become the custodian.

(k) *Relief from discovery requests.* If relief is sought under § 2200.101 or § 2200.52(e), (f), or (g) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be filed with the Commission or the Judge contemporaneously with any motion filed under § 2200.101 or § 2200.52(e), (f), or (g).

(l) *Use at hearing.* If interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion

which might result in a final order on any claim, the portions to be used shall be filed with the Commission or the Judge at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated. Section 2200.56(f) prescribes additional procedures pertaining to the use of depositions at a hearing.

(m) *Use on review or appeal.* When documentation of discovery not previously in the record is needed for review or appeal purposes, upon an application and order of the Commission or the Judge, the necessary discovery documents shall be filed with the Executive Secretary of the Commission.

#### **§ 2200.53 Production of documents and things.**

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served;

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property.

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place, and manner of making the inspection and performing related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request, unless the requesting party allows a longer time. The Commission or the Judge may allow a shorter time or a longer time, should the requesting party deny an extension. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion conforming to

§ 2200.40 with the Judge and shall annex its request to the motion, together with the response and objections, if any.

#### **§ 2200.54 Request for admissions.**

(a) *Scope and procedure—*(1) *Scope.* Any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, a party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of § 2200.52(b) relating to:

(i) Facts, the application of law to fact, or opinions about either; and

(ii) The genuineness of any described documents.

(2) *Form; copy of a document.* Each matter must be separately stated. The number of requested admissions shall not exceed 25, including subparts, except upon the agreement of the parties or by order of the Commission or the Judge. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to respond; effect of not responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its representative. A shorter or longer time for responding may be provided by written stipulation of the parties or by order of the Commission or the Judge.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for hearing.

(6) *Motion regarding the sufficiency of an answer or objection.* The requesting party may move to determine the sufficiency of an answer or objection.

Unless an objection is sustained, the Commission or the Judge must order that an answer be served. On finding that an answer does not comply with this rule, the Commission or the Judge may order either that the matter is admitted or that an amended answer be served. The Commission or the Judge may defer the final decision until a prehearing conference or a specified time before hearing.

(b) *Effect of admission; withdrawal or modification.* A matter admitted under paragraph (a) of this section is conclusively established unless the Commission or the Judge on motion permits the admission to be withdrawn or amended. The Commission or the Judge may permit withdrawal or modification if it would promote the presentation of the merits of the case and if the Commission or the Judge is not persuaded that it would prejudice the requesting party in maintaining or defending the case on the merits. An admission under paragraph (a) of this section is not an admission for any other purpose and cannot be used against the party in any other proceeding.

#### **§ 2200.55 Interrogatories.**

(a) *General.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve interrogatories upon any other party. The number of interrogatories shall not exceed 25 questions, including subparts, except upon the agreement of the parties or by order of the Commission or the Judge. The party seeking to serve more than 25 questions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of interrogatories.

(b) *Answers.* All answers shall be made in good faith and as completely as the answering party's information will permit. The answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless the answering party states that it has made reasonable inquiry and that information known or readily obtainable by it is insufficient to enable it to answer the substance of the interrogatory.

(c) *Procedure.* Each interrogatory shall be answered separately and fully under oath or affirmation. If the interrogatory is objected to, the objection shall be stated in lieu of the answer. The answers are to be signed by the person

making them and the objections shall be signed by the party or its counsel. The party on whom the interrogatories have been served shall serve a copy of its answers or objections upon the propounding party within 30 days after the service of the interrogatories. The Judge may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to file a motion conforming to § 2200.40 for an order with respect to any objection or other failure to answer an interrogatory.

#### **§ 2200.56 Depositions.**

(a) *General.* Depositions of parties, intervenors, or witnesses shall be allowed only by agreement of all the parties or on order of the Commission or the Judge following the filing of a motion of a party stating good and just reasons. All depositions shall be before an officer authorized to administer oaths and affirmations at the place of examination. The deposition shall be taken in accordance with the Federal Rules of Civil Procedure, particularly Federal Rule of Civil Procedure 30.

(b) *When to file.* A motion to take depositions may be filed after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss.

(c) *Notice of taking.* Any depositions allowed by the Commission or the Judge may be taken after 14 days' written notice to the other party or parties. The 14-day notice requirement may be waived by the parties pursuant to § 2200.52(a)(4)(i).

(d) *Method of recording and expenses.* The party that notices the deposition must state in the notice the method for recording the testimony. Unless the Commission or the Judge orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. Witnesses whose depositions are taken and the person recording the deposition shall each be paid the same fees that are paid for like services in the federal courts. Any party may arrange to transcribe a deposition. The party noticing the deposition shall pay the recording costs, any witness fees, and mileage expense. Deposition subpoenas shall comply with § 2200.65.

(e) *Use of depositions.* Depositions taken under this rule may be used for discovery, to contradict or impeach the testimony of a deponent as a witness, or for any other purpose permitted by the Federal Rules of Evidence and the Federal Rules of Civil Procedure, particularly Federal Rule of Civil Procedure 32. An audio or audiovisual deposition offered into evidence in whole or in part must be accompanied by a transcription of the deposition. All

transcription costs must be borne by the party offering the deposition into evidence.

(f) *Excerpts from depositions to be offered at hearing.* Except when used for purposes of impeachment, at least 7 days prior to the hearing, the parties or counsel shall furnish to the Judge and all opposing parties or counsel the transcribed excerpts from depositions (by page and line number) which they expect to introduce at the hearing. Four working days later, the adverse party or counsel for the adverse party shall furnish to the Judge and all opposing parties or counsel additional transcribed excerpts from the depositions (by page and line number) which they expect to be read pursuant to Federal Rules of Civil Procedure 32(a)(4), as well as any objections (by page and line number) to opposing party's or counsel's depositions. With reasonable notice to the Judge and all parties or counsel, other excerpts may be read.

#### **§ 2200.57 [Reserved]**

### **Subpart E—Hearings**

#### **§ 2200.60 Notice of hearing; location.**

Except by agreement of the parties, or in an expedited proceeding under § 2200.103, when a hearing is first set, the Judge shall give the parties and intervenors notice of the time, place, and nature of the hearing at least 30 days in advance of the hearing. If a hearing is being rescheduled, or if exigent circumstances are present, at least 10 days' notice shall be given. The Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as is practicable.

#### **§ 2200.61 Submission without hearing.**

(a) A case may be fully stipulated by the parties and submitted to the Commission or the Judge for a decision at any time. The stipulation of facts shall be in writing and signed by the parties or their representatives. The submission of a case under this rule does not alter the burden of proof, the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

(b) Motions for summary judgment are governed by § 2200.40(j).

#### **§ 2200.62 Postponement of hearing.**

(a) *Motion to postpone.* A hearing may be postponed by the Judge on the Judge's own initiative or for good cause shown upon the motion of a party. A motion for postponement shall state the position of the other parties, either by a joint motion or by a representation of the moving party. The filing of a motion

for postponement does not automatically postpone a hearing. The form and content of such motions shall comply with § 2200.40.

(b) *Grounds for postponement.* A motion for postponement grounded on conflicting engagements of counsel or employment of new counsel shall be promptly filed.

(c) *When motion must be received.* A motion to postpone a hearing must be received at least 10 days prior to the hearing. A motion for postponement received less than 10 days prior to the hearing will generally be denied unless good cause is shown for late filing.

(d) *Postponement in excess of 60 days.* No postponement in excess of 60 days shall be granted without the concurrence of the Chief Administrative Law Judge. The original of any motion seeking a postponement in excess of 60 days shall be filed with the Judge and a copy sent to the Chief Administrative Law Judge.

#### **§ 2200.63 Stay of proceedings.**

(a) *Motion for stay.* Stays are not favored. A party seeking a stay of a case assigned to a Judge shall file a motion for stay conforming to § 2200.40 with the Judge and send a copy to the Chief Administrative Law Judge. A motion for a stay shall state the position of the other parties, either by a joint motion or by the representation of the moving party. The motion shall set forth the reasons a stay is sought and the length of the stay requested.

(b) *Ruling on motion to stay.* The Judge, with the concurrence of the Chief Administrative Law Judge, may grant any motion for stay for the period requested or for such period as is deemed appropriate.

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct. The length of time between the reports shall be no longer than 90 days unless the Judge otherwise orders.

#### **§ 2200.64 Failure to appear.**

(a) *Attendance at hearing.* The failure of a party to appear in person or by a duly authorized representative at the hearing constitutes a waiver of the right to a hearing. A failure of the Secretary to appear constitutes abandonment of the case. A failure of the Respondent to appear is deemed an admission of the facts alleged and consent to the relief sought in the Complaint (or, in Simplified Proceedings, the citation and notification of proposed penalty). The Judge may default the non-appearing party without further proceeding or notice.

(b) *Requests for reinstatement.* Requests for reinstatement must be made, in the absence of extraordinary circumstances, within 7 days after the scheduled hearing date. See § 2200.90(b)(3).

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled as expeditiously as possible from the issuance of the Judge's order.

**§ 2200.65 Issuance of subpoenas; petitions to revoke or modify subpoenas; payment of witness fees and mileage; right to inspect or copy data.**

(a) *Issuance of subpoenas.* On behalf of the Commission or any Commission member, the Judge shall, on the application of any party, issue to the applying party subpoenas requiring the attendance and testimony of witnesses and/or the production of any evidence, including, but not limited to, relevant books, records, correspondence, or documents, in the witness' possession or under the witness' control, at a deposition or at a hearing before the Commission or the Judge. The party to whom the subpoena is issued shall be responsible for its service. Applications for subpoenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036-3457. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpoena(s) may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Service of subpoenas.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon the person it names may be made by service on the person named, by certified mail return receipt requested, or by leaving a copy at the person's principal place of business or at the person's residence with a person of suitable age and discretion who resides there. A subpoena may be served at any place in the United States or any Territory or possession of the United States. A subpoena may command a person to attend and produce documents or tangible things, from any place in the United States or any Territory or possession of the United States, at any designated place of hearing or deposition.

(c) *Revocation or modification of subpoenas.* Any person served with a subpoena, whether requiring attendance

and testimony (ad testificandum) or for the production of evidence (duces tecum), shall, within 5 days after the date of service of the subpoena, move in writing to revoke or modify the subpoena if the person does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The Commission or the Judge shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence to be produced, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Commission or the Judge shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke, modify, or affirm. The motion to revoke or modify, any answer filed, and any ruling on the motion shall become part of the record.

(d) *Rights of persons compelled to submit data or other information in documents.* Persons compelled to submit data or other information at a public proceeding are entitled to retain documents they submitted that contain the data or information, or to procure a copy of such documents upon their payment of lawfully prescribed costs. If such persons submit the data or other information by testimony, they are entitled to a copy of the transcript of their testimony upon their payment of the lawfully prescribed costs.

(e) *Witness fees and mileage.* Witnesses summoned to appear for a deposition or to appear before the Commission or the Judge shall be paid the same witness fees and mileage expense that are paid witnesses in the federal courts. Witness fees and mileage expense shall be paid by the party at whose instance the witness appears.

(f) *Failure to comply with subpoena.* Upon the failure of any person to comply with the subpoena issued upon the request of a party, the Commission by its counsel shall recommend to the U.S. Department of Justice that proceedings be initiated in the appropriate district court for the enforcement of the subpoena, if in the Commission's judgment the enforcement of the subpoena would be consistent with law and with policies of the Act. In such instances, neither the Commission nor its counsel shall be deemed to have assumed responsibility for the effective prosecution of the subpoena before the court.

**§ 2200.66 Transcript of testimony.**

(a) *Hearings.* Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard.

(b) *Payment for transcript.* The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it. Each party is responsible for securing and paying for its copy of the transcript.

(c) *Correction of errors.* Error in the transcript of the hearing may be corrected by the Judge on the Judge's own motion, on joint motion by the parties, or on motion by any party. The motion shall conform to § 2200.40 and shall state the error in the transcript and the correction to be made. The official transcript shall reflect the corrections.

**§ 2200.67 Duties and powers of Judges.**

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to the Judge, between the time the Judge is designated and the time the Judge issues a decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issue authorized subpoenas and rule on petitions to modify, remove, or affirm, in accordance with § 2200.65;

(c) Rule on claims of privilege and claims that information is protected and issue protective orders, in accordance with § 2200.52(d) and (e).

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints, or portions of complaints, and to order hearings reopened or, upon motion, consolidated prior to issuance of a decision;

(i) Make decisions that conform to 5 U.S.C. 557 of the Administrative Procedure Act;



(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Approve or appoint an interpreter;

(l) Request the parties to state their respective positions concerning any issue in the case or theory in support of their position;

(m) Adjourn the hearing as the needs of justice and good administration require;

(n) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

#### **§ 2200.68 Recusal of the Judge.**

(a) *Discretionary recusal.* A Judge may recuse himself or herself from a proceeding whenever the Judge deems it appropriate.

(b) *Mandatory recusal.* A Judge shall recuse himself or herself under circumstances that would require disqualification of a federal judge under Canon 3(C) of the Code of Conduct for United States Judges, except that the required recusal may be set aside under the conditions specified by Canon 3(D).

(c) *Request for recusal.* Any party may request that the Judge, at any time following the Judge's designation and before the filing of a decision, be recused under paragraph (a) or (b) of this section or both by filing with the Judge, promptly upon the discovery of the alleged facts, an affidavit setting forth in detail the matters alleged to constitute grounds for recusal.

(d) *Ruling on request.* If the Judge finds that a request for recusal has been filed with due diligence and that the material filed in support of the request establishes that recusal either is appropriate under paragraph (a) of this section or is required under paragraph (b) of this section, the Judge shall recuse himself or herself from the proceeding. If the Judge denies a request for recusal, the Judge shall issue a ruling on the record, stating the grounds for denying the request, and shall proceed with the hearing, or, if the hearing has closed, proceed with the issuance of a decision under the provisions of § 2200.90.

#### **§ 2200.69 Examination of witnesses.**

Witnesses shall be examined orally under oath or affirmation. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party. All parties shall have the right to cross-examine any witness called by the Judge pursuant to § 2200.67(j).

#### **§ 2200.70 Exhibits.**

(a) *Marking exhibits.* All exhibits offered in evidence by a party shall be

marked for identification before or during the hearing. Exhibits shall be marked with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively.

(b) *Removal or substitution of exhibits in evidence.* Unless the Judge finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors. A party may remove an exhibit from the official record during the hearing or at the conclusion of the hearing only upon permission of the Judge. The Judge, in the Judge's discretion, may permit the substitution of a duplicate for any original document offered into evidence.

(c) *Reasons for denial of admitting exhibit.* A Judge may, in the Judge's discretion, deny the admission of any exhibit because of its excessive size, weight, or other characteristic that prohibits its convenient transportation and storage. A party may offer into evidence photographs, models, or other representations of any such exhibit.

(d) *Rejected exhibits.* All exhibits offered but denied admission into evidence, except exhibits referred to in paragraph (c) of this section, shall be placed in a separate file designated for rejected exhibits.

(e) *Return of physical exhibits.* A party may on motion request the return of a physical exhibit within 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or within 30 days after completion of any proceedings initiated in a Court of Appeals. The motion shall be addressed to the Executive Secretary and provide supporting reasons. The exhibit shall be returned if the Executive Secretary determines that it is no longer necessary for use in any Commission proceeding.

(f) *Request for custody of physical exhibit.* Any person may on motion to the Executive Secretary request custody of a physical exhibit for use in any court or tribunal. The motion shall state the reasons for the request and the duration of custody requested. If the exhibit has been admitted in a pending Commission case, the motion shall be served on all parties to the proceeding. Any person granted custody of an exhibit shall inform the Executive Secretary of the status every 6 months of the person's continuing need for the exhibit and return the exhibit after completion of the proceeding.

(g) *Disposal of physical exhibit.* Any physical exhibit may be disposed of by the Commission's Executive Secretary subject to the requirements of the

National Archives and Records Administration.

#### **§ 2200.71 Rules of evidence.**

The Federal Rules of Evidence are applicable.

#### **§ 2200.72 Objections.**

(a) *Statement of objection.* Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

(c) Once the Judge rules definitively on the record—either before or at the hearing—a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

#### **§ 2200.73 Interlocutory review.**

(a) *General.* Interlocutory review of a Judge's ruling is discretionary with the Commission. A petition for interlocutory review may be granted only where the petition asserts and the Commission finds:

(1) That the review involves an important question of law or policy that controls the outcome of the case, and that immediate review of the ruling will materially expedite the final disposition of the proceedings or subsequent review by the Commission may provide an inadequate remedy; or

(2) That the ruling will result in a disclosure, before the Commission may review the Judge's report, of information that is alleged to be privileged.

(b) *Petition for interlocutory review.* Within 7 days following the service of a Judge's ruling from which review is sought, a party may file a petition for interlocutory review with the Commission. Responses to the petition, if any, shall be filed within 7 days following service of the petition. Service of the filed petition on the other parties and intervenors shall be accomplished in a manner prescribed in § 2200.7(c). A copy of the petition and responses shall be filed with the Judge. The petition is denied unless granted within 30 days of the date of receipt by the Commission's Executive Secretary. A corporate party that files a petition for interlocutory review or a response to such a petition under this section shall file with the Commission a copy of its declaration of



corporate parents, subsidiaries, and affiliates previously filed with the Judge under the requirements of § 2200.35 or § 2200.37(d)(4). In its discretion the Commission may refuse to accept for filing a petition or response that fails to comply with this disclosure requirement. A corporate party filing the declaration required by this paragraph shall have a continuing duty to advise the Executive Secretary of any changes to its declaration until the petition is deemed denied or a decision is issued on the merits.

(c) *Denial without prejudice.* The Commission's decision not to grant a petition for interlocutory review shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review.

(d) *Stay—(1) Trade secret matters.* The filing of a petition for interlocutory review of a Judge's ruling concerning an alleged trade secret shall stay the effect of the ruling until the petition is deemed denied or ruled upon.

(2) *Other cases.* In all other cases, the filing or granting of a petition for interlocutory review shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(e) *Judge's comments.* The Judge may be requested to provide the Commission with written views on whether the petition is meritorious. When the written comments are filed with the Commission, the Judge shall serve the comments on all parties in a manner prescribed in § 2200.7(c).

(f) *Briefs.* Notice shall be given to the parties if the Commission decides to request briefs on the issues raised by an interlocutory review. See § 2200.93—Briefs before the Commission.

(g) *When filing effective.* A petition for interlocutory review is deemed to be filed only when received by the Commission, as specified in § 2200.8(e)(2).

**§ 2200.74 Filing of briefs and proposed findings with the Judge; oral argument at the hearing.**

(a) *General.* A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Any party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. In lieu of briefs, the Judge may permit or direct the parties to file memoranda or statements of authority.

(b) *Time.* Briefs shall be filed simultaneously on a date established by the Judge. A motion for extension of

time for filing any brief shall be made at least 3 working days prior to the due date and shall recite that the moving party has conferred with the other parties on the motion. Reply briefs shall not be allowed except by order of the Judge.

(c) *Untimely briefs.* Untimely briefs will not be accepted unless accompanied by a motion setting forth good cause for the delay. The form and content of motions shall comply with § 2200.40.

**Subpart F—Posthearing Procedures**

**§ 2200.90 Decisions and reports of Judges.**

(a) *Judge's decision—(1) Contents of Judge's decision.* The Judge shall prepare a decision that conforms to 5 U.S.C. 557 of the Administrative Procedure Act and constitutes the final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The decision shall include an order affirming, modifying, or vacating each contested citation item and each proposed penalty or directing other appropriate relief. A decision finally disposing of a petition for modification of the abatement period shall contain an order affirming or modifying the abatement period.

(2) *Service of the Judge's decision.* The Judge shall serve a copy of the decision on each party in a manner prescribed in § 2200.7(c).

(b) *Judge's report—(1) Contents of Judge's report.* The Judge's report shall consist of the entire record, including the Judge's decision.

(2) *Filing of Judge's report.* On the eleventh day after service of the decision on the parties, the Judge shall file the report with the Executive Secretary for docketing.

(3) *Docketing of Judge's report by Executive Secretary.* Promptly upon filing of the Judge's report, the Executive Secretary shall docket the report and notify all parties of the docketing date. The date of docketing of the Judge's report is the date that the Judge's report is made for purposes of section 12(j) of the Act, 29 U.S.C. 661(j).

(4) *Correction of errors in Judge's report.* (i) Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order as described in paragraph (f) of this section, the Judge may correct clerical errors arising through oversight or inadvertence in decisions, orders, or

other parts of the record under Federal Rule of Civil Procedure 60(a). If a Judge's report has been directed for review, the decision may be corrected during the pendency of review with leave of the Commission.

(ii) After a Judge's decision has become a final order as described in paragraph (f) of this section, the Commission or the Judge may correct a clerical mistake or a mistake arising from oversight or omission under Federal Rule of Civil Procedure 60(a).

(c) *Relief from default.* Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under § 2200.101(b), § 2200.52(f), or § 2200.64(b).

(d) *Filing documents after the docketing date.* Except for documents filed under paragraph (b)(4)(i) of this section, which shall be filed with the Judge, on or after the date of docketing of the Judge's report all documents shall be filed with the Executive Secretary.

(e) *Settlement.* Settlement documents shall be filed in the manner prescribed in § 2200.100(c).

(f) *Judge's decision final unless review directed.* If no Commissioner directs review of a report on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge shall become a final order of the Commission.

**§ 2200.91 Discretionary review; petitions for discretionary review; statements in opposition to petitions.**

(a) *Review discretionary.* Review by the Commission is not a right. A Commissioner may, as a matter of discretion, direct review on the Commissioner's own motion or on the petition of a party.

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review with the Executive Secretary at any time following the service of the Judge's decision on the parties but no later than 20 days after the date of docketing of the Judge's report. Service of the filed petition on the other parties and intervenors shall be accomplished in a manner prescribed in § 2200.7(c). The earlier a petition is filed, the more consideration it can be given. A petition for discretionary review may be conditional, and it may state that review is sought only if a Commissioner were to direct review on the petition of an opposing party.

(c) *Cross-petitions for discretionary review.* Where a petition for discretionary review has been filed by

one party, any other party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a cross-petition for discretionary review. The cross-petition may be conditional. See paragraph (b) of this section. A cross-petition shall be filed directly with the Executive Secretary within 27 days after the date of docketing of the Judge's report. The earlier a cross-petition is filed, the more consideration it can be given.

(d) *Contents of the petition.* No particular form is required for a petition for discretionary review. A petition should state why review should be directed, including: Whether the Judge's decision raises an important question of law, policy, or discretion; whether review by the Commission will resolve a question about which the Commission's Judges have rendered differing opinions; whether the Judge's decision is contrary to law or Commission precedent; whether a finding of material fact is not supported by a preponderance of the evidence; whether a prejudicial error of procedure or an abuse of discretion was committed. A petition should concisely state the portions of the decision for which review is sought and should refer to the citations and citation items (for example, citation 3, item 4a) for which review is sought. A petition shall not incorporate by reference a brief or legal memorandum. Brevity and the inclusion of precise references to the record and legal authorities will facilitate prompt review of the petition.

(e) *When filing effective.* A petition for discretionary review is filed when received by the Commission, as specified in § 2200.8(e)(2).

(f) *Prerequisite to judicial review; effect of filing.* A petition for review under this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. The effect of filing a petition for review is to stay the decision of the Judge.

(g) *Statements in opposition to petition.* Statements in opposition to petitions for discretionary review may be filed in the manner specified in this section for the filing of petitions for discretionary review. Statements in opposition shall concisely state why the Judge's decision should not be reviewed with respect to each portion of the petition to which it is addressed.

#### **§ 2200.92 Review by the Commission.**

(a) *Jurisdiction of the Commission; issues on review.* Unless the Commission orders otherwise, a direction for review establishes

jurisdiction in the Commission to review the entire case. The issues to be decided on review are within the discretion of the Commission.

(b) *Review on a Commissioner's motion; issues on review.* At any time within 30 days after the docketing date of the Judge's report, a Commissioner may, on the Commissioner's own motion, direct that a Judge's decision be reviewed. Factors that may be considered in deciding whether to direct review absent a petition include, but are not limited to, whether the case raises novel questions of law or policy or involves a conflict between Administrative Law Judges' decisions. When a Commissioner directs review on the Commissioner's own motion, the issues ordinarily will be those specified in the direction for review or any later order.

(c) *Issues not raised before Judge.* The Commission will ordinarily not review issues that the Judge did not have the opportunity to pass upon. In exercising discretion to review issues that the Judge did not have the opportunity to pass upon, the Commission may consider such factors as whether there was good cause for not raising the issue before the Judge, the degree to which the issue is factual, the degree to which proceedings will be disrupted or delayed by raising the issue on review, whether the ability of an adverse party to press a claim or defense would be impaired, and whether considering the new issue would avoid injustice or ensure that judgment will be rendered in accordance with the law and facts.

#### **§ 2200.93 Briefs before the Commission.**

(a) *Requests for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission. After briefs are requested, a party may, instead of filing a brief, file a letter setting forth its arguments or a letter stating that it will rely on its petition for discretionary review or previous brief. A party not intending to file a brief shall notify the Commission in writing within the applicable time for filing briefs and shall serve a copy on all other parties. The provisions of this section apply to the filing of briefs and letters filed in lieu of briefs.

(b) *Filing briefs.* Unless the briefing notice states otherwise:

(1) *Time for filing briefs.* The party required to file the first brief shall do so within 40 days after the date of the briefing notice. All other parties shall file their briefs within 30 days after the first brief is served. Any reply brief permitted by these rules or by order shall be filed within 15 days after the second brief is served.

(2) *Sequence of filing.* (i) If one petition for discretionary or interlocutory review has been filed, the petitioning party shall file the first brief.

(ii) If more than one petition has been filed, the party whose petition was filed first shall file the first brief.

(iii) If no petition has been filed, the parties shall file simultaneous briefs.

(3) *Reply briefs.* The party that filed the first brief may file a reply brief, or, if briefs are to be filed simultaneously, both parties may file a reply brief. Additional briefs are otherwise not allowed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed at the Commission no later than 5 days prior to the expiration of the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40, and shall include the following information: when the brief is due, the number and duration of extensions of time that have been granted to each party, the length of extension being requested, the specific reason for the extension being requested, and an assurance that the brief will be filed within the time extension requested.

(d) *Consequences of failure to timely file brief.* The Commission may decline to accept a brief that is not timely filed. If a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief. If the non-petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may decide the case without that party's brief. If a case was directed for review upon a Commissioner's own motion, and any party fails to respond to the briefing notice, the Commission may either vacate the direction for review or decide the case without briefs.

(e) *Length of brief.* Except by permission of the Commission, a main brief, including briefs and legal memoranda it incorporates by reference, shall contain no more than 35 pages of text. A reply brief, including briefs and legal memoranda it incorporates by reference, shall contain no more than 20 pages of text.

(f) *Format.* Briefs shall be typewritten, double spaced, with typeface of text being no smaller than 12-point and typeface of footnotes being no smaller than 11-point, on letter size opaque paper (8½ inches by 11 inches). All margins shall be 1½ inches.

(g) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(h) *Failure to meet requirements.* The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(i) *Brief of an amicus curiae.* The Commission may allow a brief of an amicus curiae pursuant to the criteria and time period set forth in § 2200.23. Any brief of an amicus curiae must meet the requirements of paragraphs (b) through (h) of this section. No reply brief of an amicus curiae will be received.

#### **§ 2200.94 [Reserved]**

#### **§ 2200.95 Oral argument before the Commission.**

(a) *When ordered.* Upon motion of any party or upon its own motion, the Commission may order oral argument. Parties requesting oral argument must demonstrate why oral argument would facilitate resolution of the issues before the Commission. Normally, motions for oral argument shall not be considered until after all briefs have been filed.

(b) *Notice of argument.* The Executive Secretary shall advise all parties whether oral argument is to be heard. Within a reasonable time before the oral argument is scheduled, the Executive Secretary shall inform the parties of the time and place therefor, the issues to be heard, and the time allotted to the parties.

(c) *Postponement.* (1) Except under extraordinary circumstances, a request for postponement must be filed at least 10 days before oral argument is scheduled.

(2) The Executive Secretary shall notify the parties of a postponement in a manner best calculated to avoid unnecessary travel or inconvenience to the parties. The Executive Secretary shall inform all parties of the new time and place for the oral argument.

(d) *Order and content of argument.* (1) Counsel shall be afforded such time for oral argument as the Commission may provide by order. Requests for enlargement of time may be made by motion filed reasonably in advance of the date fixed for the argument.

(2) The petitioning party shall argue first. If the case is before the Commission on cross-petitions, the Commission will inform the parties in advance of the order of appearance.

(3) Counsel may reserve a portion of the time allowed for rebuttal but in opening argument shall present the case fairly and completely and shall not reserve points of substance for presentation during rebuttal.

(4) Oral argument should undertake to emphasize and clarify the written arguments appearing in the briefs. The Commission will look with disfavor on any oral argument that is read from a previously filed document.

(5) At any time, the Commission may terminate a party's argument or interrupt the party's presentation for questioning by the Commissioners.

(e) *Failure to appear.* Should either party fail to appear for oral argument, the party present may be allowed to proceed with its argument.

(f) *Consolidated cases.* Where two or more consolidated cases are scheduled for oral argument, the consolidated cases shall be considered as one case for the purpose of allotting time to the parties unless the Commission otherwise directs.

(g) *Multiple counsel.* Where more than one counsel argues for a party to the case or for multiple parties on the same side in the case, it is counsels' responsibility to agree upon a fair division of the total time allotted. In the event of a failure to agree, the Commission will allocate the time. The Commission may, in its discretion, limit the number of counsel heard for each party or side in the argument. No later than 5 days prior to the date of scheduled argument, the Commission must be notified of the names of the counsel who will argue.

(h) *Exhibits/visual aids.* (1) The parties may use exhibits introduced into evidence at the hearing. If a party wishes to use a visual aid not part of the record, written notice of the proposed use shall be given to opposing counsel 15 days prior to the argument. Objections, if any, shall be in writing, served on all adverse parties, and filed not fewer than 7 days before the argument.

(2) No visual aid shall introduce or rely upon facts or evidence not already part of the record.

(3) If visual aids or exhibits other than documents are to be used at the argument, counsel shall arrange with the Executive Secretary to have them placed in the hearing room on the date of the argument before the Commission convenes.

(4) Parties using visual aids not introduced into evidence shall have them removed from the hearing room unless the Commission directs otherwise. If such visual aids are not reclaimed by the party within a reasonable time after notice is given by the Executive Secretary, such visual aids shall be disposed of at the discretion of the Executive Secretary.

(i) *Recording oral argument.* (1) Unless the Commission directs

otherwise, oral arguments shall be electronically recorded and made part of the record. Any other sound recording in the hearing room is prohibited. Oral arguments shall also be transcribed verbatim. A copy of the transcript of the oral argument taken by a qualified court reporter, shall be filed with the Commission. The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it.

(2) Persons desiring to listen to the recordings shall make appropriate arrangements with the Executive Secretary. Any party desiring a written copy of the transcript is responsible for securing and paying for its copy.

(3) Error in the transcript of the oral argument may be corrected by the Commission on its own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. The official transcript shall reflect the corrections.

(j) *Failure to file brief.* A party that fails to file a brief shall not be heard at the time of oral argument except by permission of the Commission.

(k) *Participation in oral argument by amicus curiae.* (1) An amicus curiae will not be permitted to participate in the oral argument without leave of the Commission upon proper motion. Participation generally will be limited to a portion of the time allotted to the party in whose interest the amicus curiae seeks to participate. In extraordinary circumstances, the amicus curiae may be allotted its own time for oral argument.

(2) A motion by amicus curiae seeking leave to participate in oral argument shall be filed no later than 14 days prior to the date oral argument is scheduled.

(3) The motion of an amicus curiae for leave to participate at oral argument shall identify the interest of the applicant and shall state the reason(s) why its participation at oral argument is desirable.

(4) Motions in opposition to the motion of an amicus curiae for leave to participate in the oral argument must be filed within 10 days of the date of the motion.

#### **§ 2200.96 Commission receipt of copies of petitions for judicial review of Commission orders when petitions for review are filed in two or more courts of appeals with respect to the same order.**

The Commission officer and office designated to receive, pursuant to 28 U.S.C. 2112(a)(1), copies of petitions for review of Commission orders, from the persons instituting the review proceedings in a court of appeals, are

the Executive Secretary and the Office of the Executive Secretary at the Commission's Office, One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036-3457. The petition shall state that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the persons or person who filed the petition in the court of appeals and shall be stamped by the court with the date of filing. (28 U.S.C. 2112(a) contains certain applicable requirements.)

## Subpart G—Miscellaneous Provisions

### § 2200.100 Settlement.

(a) *Policy.* Settlement is permitted and encouraged by the Commission at any stage of the proceedings.

(b) *Requirements—(1) Notification of Settlement.* If the parties have agreed to a partial or full settlement, they shall so notify the Judge in a written joint submission (titled “Notification of Settlement” or “Notification of Partial Settlement,” as appropriate), in which the parties shall:

(i) List the contested items that have been settled and, if only a partial settlement agreement has been reached, also list the contested items that remain to be decided;

(ii) If posting of the settlement agreement is required by § 2200.7(g), certify that the parties' settlement agreement has been posted in the manner prescribed by that rule and certify the date of posting;

(iii) If party status has been elected under § 2200.20, certify that the party has been afforded an opportunity to provide input on all matters pertaining to the settlement before the agreement is finalized; and

(iv) If the settlement agreement includes the withdrawal of a notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period, state whether such withdrawal is with prejudice.

(2) The parties shall not incorporate the settlement agreement in, or append it to, the joint submission required in paragraph (b)(1) of this section or substitute the settlement agreement for the required joint submission.

(3) *Issuance of order terminating proceeding.* If the requirements of paragraphs (b)(1) and (2) of this section have been met with respect to all contested citation items and no affected employees who have elected party status have raised an objection to the reasonableness of any abatement period, the Judge shall issue an Order acknowledging that the parties have resolved all contested citation items and

agreed to terminate the proceeding before the Commission.

(c) *Filing; service and notice.* A Notification of Settlement submitted after a Judge's report has been issued shall be filed with the Executive Secretary. Proof of service shall be filed with the Notification of Settlement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and (d) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a draft order terminating the proceedings for adoption by the Judge. If the time has not expired under these rules for electing party status, an order acknowledging the termination of the proceedings before the Commission because of the settlement shall not be issued until at least 14 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement period.

### § 2200.101 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or the Judge, the party may be declared to be in default either on the initiative of the Commission or the Judge, after having been afforded an opportunity to show cause why the party should not be declared to be in default, or on the motion of a party. Subsequently, the Commission or the Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or the Judge and upon motion conforming to § 2200.40 expeditiously made, the Commission or the Judge may set aside a sanction imposed under paragraph (a) of this section. See § 2200.90(c).

(c) *Discovery sanctions and failure to appear.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(f), or to a default for failure to appear, which is governed by § 2200.64(a).

(d) *Show cause orders.* All show cause orders issued by the Commission or the Judge under paragraph (a) of this section shall be served in a manner prescribed in § 2200.7(o).

### § 2200.102 Withdrawal.

A party may withdraw its notice of contest, citation, notification of proposed penalty, or petition for modification of abatement period at any stage of a proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c) upon all parties and authorized employee representatives that are eligible to elect, but have not elected, party status. It shall also be posted in the manner prescribed in § 2200.7(g) for the benefit of any affected employees not represented by an authorized employee representative who are eligible to elect, but have not elected, party status. Proof of service shall accompany the notice of withdrawal in accordance with § 2200.7(d).

### § 2200.103 Expedited proceeding.

(a) *When ordered.* Upon application of any party or intervenor or upon its own motion, the Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Commission, the Executive Secretary shall notify all parties and intervenors.

(b) *Automatic expedition.* Cases initiated by employee contests and petitions for modification of abatement period shall be expedited. See §§ 2200.37(d)(2) and 2200.38(c).

(c) *Effect of ordering expedited proceeding.* When an expedited proceeding is required by these rules or ordered by the Commission, it shall take precedence on the docket of the Judge to whom it is assigned, or on the Commission's review docket, as applicable, over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(d) *Time sequence set by Judge.* The assigned Judge shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

### § 2200.104 Standards of conduct.

(a) *General.* All representatives appearing before the Commission and its Judges shall comply with the letter and spirit of the Model Rules of Professional Conduct of the American Bar Association.

(b) *Misbehavior before a Judge*—(1) *Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing or may be stated in the record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

(2) *Appeal rights if excluded.* Any attorney or other representative excluded from a proceeding by a Judge may, within 7 days of the exclusion, appeal to the Commission for reinstatement. No proceeding shall be delayed or suspended pending disposition of the appeal.

(c) *Disciplinary action by the Commission.* If an attorney or other representative practicing before the Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Commission or its Judges, the Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Commission.

(d) *Show cause orders.* All show cause orders issued by the Commission under paragraph (c) of this section shall be served in a manner prescribed in § 2200.7(o).

#### **§ 2200.105 Ex parte communication.**

(a) *General.* Except as permitted by § 2200.120 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives, or other interested persons.

(b) *Disciplinary action.* In the event an ex parte communication occurs, the Commission or the Judge may make such orders or take such actions as fairness requires. The exclusion of a person by a Judge from a proceeding shall be governed by § 2200.104(b). Any disciplinary action by the Commission,

including suspension or disbarment, shall be governed by § 2200.104(c).

(c) *Placement on public record.* All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

#### **§ 2200.106 Amendment to rules.**

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained in this Part. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be sent by email to [rules.suggestions@oshrc.gov](mailto:rules.suggestions@oshrc.gov) or addressed to the Executive Secretary of the Commission at One Lafayette Centre, 1120 20th Street NW, Suite 980, Washington, DC 20036-3457.

#### **§ 2200.107 Special circumstances; waiver of rules.**

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or the Judge may, upon application by any party or intervenor or on their own motion, after 3 working days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

#### **§ 2200.108 Official Seal of the Occupational Safety and Health Review Commission.**

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

### **Subpart H—Settlement Part**

#### **§ 2200.120 Settlement procedure.**

(a) *Voluntary settlement*—(1) *Applicability and duration.* (i) Voluntary settlement applies only to notices of contests by employers and to applications for fees under the Equal Access to Justice Act and 29 CFR part 2204.

(ii) Upon motion of any party conforming to § 2200.40 after the docketing of the notice of contest, or with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge may assign a case to a Settlement Judge for proceedings under this section. In the

event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(2) *Length of voluntary settlement procedures.* Voluntary settlement procedures shall be for a period not to exceed 75 days, unless extended with the concurrence of the Chief Administrative Law Judge.

(b) *Mandatory settlement*—(1) *Applicability.* Mandatory settlement applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$185,000 or greater. Periodically, the aggregate amount of penalties for case referral to Mandatory Settlement Proceedings may be adjusted proportionately upon consideration of the penalty increases required by the Inflation Adjustment Act of 2015. The adjusted aggregate penalty amount for case referral to Mandatory Settlement will be posted on the Commission's website ([www.oshrc.gov](http://www.oshrc.gov)).

(2) *Assignment of case and appointment of Settlement Judge.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest, the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (b)(1) of this section. The Chief Administrative Law Judge shall appoint a Settlement Judge, who shall be a Judge other than the one assigned to hear and decide the case, except as provided in paragraph (f)(2) of this section.

(3) *Mandatory settlement proceedings.* (i) The Settlement Judge may consult all attorneys, non-attorney representatives, and self-represented parties by any suitable means to schedule the Settlement Conference and to facilitate preparation for the conference.

(ii) The Settlement Judge may issue a preconference scheduling order addressing procedural matters, including but not limited to, formal pleadings, settlement status conference calls, ex parte caucus calls, and allowing, limiting, or suspending discovery during the settlement proceedings.

(iii) The Settlement Conference shall be conducted as soon as practicable, taking into consideration the case size, the complexity of the issues, and the time needed to complete preconference preparation.

(iv) Mandatory settlement procedures under this section shall be for a period not to exceed 120 days, unless extended with the concurrence of the Chief Administrative Law Judge.

(v) If at the conclusion of the settlement proceedings the case has not been settled, the Settlement Judge shall promptly inform the Chief Administrative Law Judge in accordance with § 2200.120(f)(2).

(c) *Powers and duties of Settlement Judges.* (1) The Settlement Judge shall confer with the parties regarding the whole or partial settlement of the case and seek resolution of as many issues as is feasible.

(2) The Settlement Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue and may enter other orders as appropriate to facilitate the proceedings.

(3) The Settlement Judge may allow or suspend discovery during the settlement proceedings.

(4) The Settlement Judge has the discretion to engage in ex parte communications throughout the course of settlement proceedings. The Settlement Judge may suggest privately to each attorney or other representative of a party what concessions the client should consider and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(5) The Settlement Judge may, with the consent of the parties, conduct such other settlement proceedings as may aid in the settlement of the case.

(d) *Settlement conference*—(1) *General.* The Settlement Judge shall convene and preside over conferences between the parties. Settlement conferences may be conducted telephonically or in person. The Settlement Judge shall designate a conference place and time.

(2) *Participation in conference.* The Settlement Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Judge so that the Settlement Judge may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Judge or the refusal to cooperate fully within the spirit of this rule may result in default or the imposition of sanctions under § 2200.101.

(3) *Confidentiality of settlement proceedings.* (i) All statements made

and all information presented during the course of settlement proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Judge shall issue appropriate orders to protect the confidentiality of settlement proceedings.

(ii) The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or the party's representative during settlement proceedings except with the consent of that party.

(iii) The following shall not be admissible in any subsequent hearing, except by stipulation of the parties:

(A) Evidence of statements or conduct in settlement proceedings under this section within the scope of Federal Rule of Evidence 408,

(B) Notes or other material prepared by or maintained by the Settlement Judge in connection with settlement proceedings, and

(C) Communications between the Settlement Judge and the Chief Administrative Law Judge in connection with settlement proceedings including the report of the Settlement Judge under paragraph (f) of this section.

(iv) Documents and factual information disclosed in the settlement proceeding may not be used in litigation unless obtained through appropriate discovery or subpoena.

(v) With respect to the Settlement Judge's participation in settlement proceedings, the Settlement Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(vi) The requirements of paragraph (d)(3) of this section apply unless disclosure is required by any applicable law or public policy.

(e) *Record of settlement proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Judge shall not file or cause to be filed in the official case record any material in the Settlement Judge's possession relating to these settlement proceedings, including but not limited to communications with the Chief Administrative Law Judge and the Settlement Judge's report under

paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Judge.* (1) The Settlement Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at the conclusion of the settlement period or such time that the Settlement Judge determines further negotiations would be fruitless. If the Settlement Judge has made such a determination and a settlement agreement is not achieved within 75 days of the case being assigned to voluntary settlement proceedings or within 120 days of being assigned for mandatory settlement proceedings, the Settlement Judge shall then advise the Chief Administrative Law Judge in writing. The Chief Administrative Law Judge may then in the Chief Administrative Law Judge's discretion allow an additional period of time, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Judge has not approved a full settlement, the Settlement Judge shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Judge or Chief Administrative Law Judge for appropriate action on the remaining issues. If all the parties, the Settlement Judge, and the Chief Administrative Law Judge agree, the Settlement Judge may be retained as the Hearing Judge.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of any Judge and any decision by the Settlement Judge to terminate settlement proceedings under this section is not subject to review, appeal, or rehearing.

## Subpart I–L [Reserved]

## Subpart M—Simplified Proceedings

### § 2200.200 Purpose.

(a) The purpose of the Simplified Proceedings subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C.

554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are as follows.

(1) Complaints and answers are not required.

(2) Pleadings generally are not required. Early discussions among the parties and the Judge are required to narrow and define the disputes between the parties.

(3) The Secretary is required to provide the employer with certain informational documents early in the proceeding.

(4) Discovery is not permitted except as ordered by the Judge.

(5) Interlocutory appeals are not permitted.

(6) Hearings are less formal. The admission of evidence is not controlled by the Federal Rules of Evidence except as provided for in § 2200.209(c). The Judge may allow the parties to argue their case orally at the conclusion of the hearing, and may allow or require post-hearing briefs or statements of position. The judge may render a decision from the bench.

#### **§ 2200.201 Application.**

The rules in this subpart will govern proceedings before a Judge in a case chosen for Simplified Proceedings under § 2200.203.

#### **§ 2200.202 Eligibility for Simplified Proceedings.**

(a) Those cases selected for Simplified Proceedings will be those that do not involve complex issues of law or fact. Cases appropriate for Simplified Proceedings will generally include those with one or more of the following characteristics:

- (1) Relatively few citation items,
- (2) An aggregate proposed penalty of not more than \$20,000,
- (3) No allegation of willfulness or a repeat violation,
- (4) Not involving a fatality,
- (5) A hearing that is expected to take less than 2 days, or
- (6) A small employer whether appearing pro se or represented by counsel.

(b) Those cases with an aggregate proposed penalty of more than \$20,000, but not more than \$30,000, if otherwise appropriate, may be selected for Simplified Proceedings at the discretion of the Chief Administrative Law Judge.

#### **§ 2200.203 Commencing Simplified Proceedings.**

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at the Chief Administrative Law Judge's discretion, assign an appropriate case for Simplified Proceedings.

(b) *Party request.* Within 21 days of the notice of docketing, any party may request that the case be assigned for Simplified Proceedings. The request must be in writing. For example, "I request Simplified Proceedings" will suffice. The request must be sent to the Executive Secretary. Copies must be sent to each of the other parties.

(c) *Judge's ruling on request.* The Chief Administrative Law Judge or the Judge assigned to the case may grant a party's request and assign a case for Simplified Proceedings at the Judge's discretion. Such request shall be acted upon within 14 days of its receipt by the Judge.

(d) *Time for filing complaint or answer under § 2200.34.* If a party has requested Simplified Proceedings or the Judge has assigned the case for Simplified Proceedings, the times for filing a complaint or answer will not run. If a request for Simplified Proceedings is denied, the period for filing a complaint or answer will begin to run upon issuance of the notice denying Simplified Proceedings.

#### **§ 2200.204 Discontinuance of Simplified Proceedings.**

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the Judge assigned to the case may, upon motion by any party or upon the Judge's own motion, discontinue Simplified Proceedings and order the case to continue under conventional rules. Before discontinuing Simplified Proceedings, the Judge will consult with the Chief Administrative Law Judge.

(b) *Party motion.* At any time during the proceedings any party may request that Simplified Proceedings be discontinued and that the matter continue under conventional procedures. A motion to discontinue must conform to § 2200.40 and explain why the case is inappropriate for Simplified Proceedings. Responses to such motions shall be filed within the time specified by § 2200.40. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause, except that the Judge may deny such a motion that is filed less than 30 days before a scheduled hearing date.

(c) *Ruling.* If Simplified Proceedings are discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

#### **§ 2200.205 Filing of pleadings.**

(a) *Complaint and answer.* Once a case is designated for Simplified Proceedings, the complaint and answer requirements are suspended. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37(d)(5), or a response to an employee contest under § 2200.38(a), and if Simplified Proceedings has been ordered, no response to these documents will be required.

(b) *Motions.* Limited, if any, motion practice is contemplated in Simplified Proceedings, but all motion practice shall conform with § 2200.40.

#### **§ 2200.206 Disclosure of information.**

(a) *Disclosure to employer.* (1) Within 21 days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B) or their equivalents.

(2) Within 30 days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 days after a case is designated for Simplified Proceedings, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

(b) *Disclosure to the Secretary.* When the employer raises an affirmative defense pursuant to § 2200.207(b), the Judge shall order the employer to disclose to the Secretary such documents relevant to the affirmative defense as the Judge deems appropriate.

#### **§ 2200.207 Pre-hearing conference.**

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the Judge may conduct a pre-hearing conference, which the Judge may hold in person or by telephone or electronic means.

(b) *Content.* At the pre-hearing conference, the parties may discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues and facts; all defenses;



witnesses and exhibits; motions; and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the pre-hearing conference may not be raised later. At the conclusion of the conference, the Judge will issue an order that may set forth any agreements reached by the parties and that may specify the issues to be addressed by the parties at the hearing.

**§ 2200.208 Discovery.**

Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Judge.

**§ 2200.209 Hearing.**

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for § 2200.73 which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* Except as to matters that are protected by evidentiary privilege, the admission of evidence is not controlled by the Federal Rules of Evidence, but the Judge may accept a written stipulation of the parties that the

Federal Rules of Evidence shall apply in whole or, as specified, in part. The Judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious, or unreliable. Testimony will be given under oath or affirmation.

(d) *Reporter.* A reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

(e) *Oral and written argument.* Each party may present an oral argument at the close of the hearing. The Judge may allow or require post-hearing briefs or statements of position upon the request of either party or on the Judge's own motion. The form of any post-hearing briefs shall conform to § 2200.74 unless the Judge specifies otherwise.

(f) *Judge's decision—(1) Bench decision.* The Judge may render a decision from the bench. In rendering a decision from the bench, the Judge shall state the issues in the case and make clear both the Judge's findings of fact and conclusions of law on the record. The Judge shall reduce the bench decision in the matter to writing and serve it on the parties as soon as practicable, but no later than 45 days after the hearing. If additional time is needed, approval of the Chief Administrative Law Judge is required. The decision shall be prepared in accordance with § 2200.90(a). The written decision shall include, as an appendix, the bench decision as set forth in the transcript.

(2) *Written decision.* If the Judge does not render a decision from the bench,

the Judge will issue a written decision within 60 days of the close of the record. The record will ordinarily be deemed closed upon the latter of the filing of the hearing transcript, or the completion of any permitted post-hearing briefing. The decision will be in accordance with § 2200.90(a). If additional time is needed, approval of the Chief Administrative Law Judge is required.

(g) *Filing of Judge's decision with the Executive Secretary.* When the Judge issues a written decision, service, filing, and docketing of the Judge's written decision shall be in accordance with § 2200.90.

**§ 2200.210 Review of Judge's decision.**

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision, the parties may pursue the case following the rules in Subpart F of this part.

**§ 2200.211 Applicability of subparts A through G.**

The provisions of subpart D (§§ 2200.50–2200.56) and §§ 2200.34, 2200.37(d), 2200.38, 2200.71, and 2200.73 will not apply to Simplified Proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing Simplified Proceedings.

[FR Doc. 2019-06581 Filed 4-9-19; 8:45 am]

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# FEDERAL REGISTER

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## Part IV

### The President

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Proclamation 9859—National Crime Victims' Rights Week, 2019  
Proclamation 9860—National Volunteer Week, 2019



# Presidential Documents

Title 3—

Proclamation 9859 of April 5, 2019

The President

National Crime Victims' Rights Week, 2019

By the President of the United States of America

## A Proclamation

Ensuring the safety and security of all Americans is my foremost obligation as President. Criminals must be held accountable for the abuse they inflict on others and for the trauma they cause our communities. Thanks in large part to the dedication and hard work of our Nation's law enforcement officials, violent crime rates have decreased over the last 2 years. Millions of crimes, however, are still committed against Americans every year. These crimes affect the physical, mental, financial, and emotional well-being of victims, causing loss from which they may never fully recover. During National Crime Victims' Rights Week, we renew our commitment to supporting victims as they heal from suffering and rebuild their lives. We also express our gratitude to all those who support victims and who hold offenders accountable.

My Administration will always stand with law enforcement to protect our families from all forms of crime and abuse, and it is our core responsibility to enforce the laws of our Nation. We must continue to support our law enforcement partners to stop those who seek to do harm to our communities. Paying a heavy price as a result of those who violate our laws, many families have been shattered by criminals, terrorists, and traffickers who abuse our immigration system and enter our country illegally. Our Angel Families have endured unfathomable pain and, to prevent more American families from enduring the tragic death of a loved one at the hands of a criminal illegal alien, my Administration created a new office within the Department of Homeland Security—the Victims of Immigrant Crime Engagement, or "VOICE." VOICE has already assisted thousands of families by providing them crucial services, such as grief counseling and information about perpetrators.

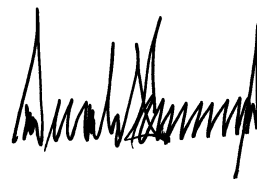
Victims of crime—including women who are survivors of crime—need safe environments conducive to disclosing to authorities information about their abuse and offender. That is one reason why my Administration is making robust funding available for domestic violence shelters, rape crisis centers, homicide support groups, and other programs that help empower victims and survivors. We are supporting more than 7,000 local programs nationwide, and this investment is giving a greater number of victims than at any time in our history access to critical victims' assistance services. We are also employing innovative methods to aid sexual assault victims in rural areas who otherwise would not have access to these important services.

My Administration continues to prioritize the protection of our most precious resource—our children. In December 2018, I signed into law the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, which creates a compensation fund that child pornography victims can use to obtain financial support for their recovery and loss. In addition, health and public safety professionals are implementing innovative programs to help children, affected by sexual abuse and the opioid crisis, put their lives on better trajectories despite the despair they have witnessed and the suffering they have endured in their homes and communities.

It is critical that we help victims get the justice, assistance, and support they need to recover and rebuild their lives—whether through restitution, compensation, counseling, transitional housing, civil legal aid, or their day in court. All victims of crime deserve our respect, and my Administration will continue to work to ensure a safer and more secure Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 7 through April 13, 2019, as National Crime Victims' Rights Week. I urge all Americans, families, law enforcement, community and faith-based organizations, and private organizations to work together to support victims of crime and protect their rights.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



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## Presidential Documents

**Proclamation 9860 of April 5, 2019**

**National Volunteer Week, 2019**

**By the President of the United States of America**

### **A Proclamation**

During National Volunteer Week, we acknowledge the many Americans who generously give their time and talents to help improve the lives of others. Their acts of kindness help build a better and brighter future, and remind us that we all have a role to play in making our communities safer, healthier, and stronger.

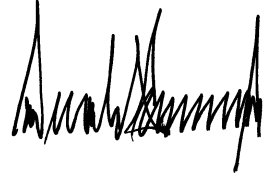
America's strength has always come from the acts of ordinary citizens. From the earliest days of our Nation, volunteers have stepped forward to serve, helping us survive our greatest challenges and achieve our greatest triumphs. Every day, through their volunteerism, millions of our citizens renew this ethic of service, which is fundamental to our Nation's character and exemplifies the resolve of the American people.

In 2017, the number of Americans volunteering hit a record high, and their contributions were worth an estimated \$167 billion in economic value. These outstanding individuals keep students on track to graduate, care for seniors, aid our veterans, and help those affected by natural disasters, war, and disease overseas. Last year, we again witnessed the servant leadership of thousands of Americans who volunteered to help their fellow citizens following natural disasters around the country. After devastating hurricanes, flooding, tornadoes, and wildfires, countless Americans answered the call to help others rebuild and recover. Even in times of great uncertainty and despair, their compassion helped renew the hope of so many in need.

Americans' commitment to serving others has always contributed to the success and prosperity of our Nation. This week, we pay tribute to our country's volunteers and recognize every American who takes time to help others. We celebrate the spirit and generosity that drive our citizens to care for others and serve a cause greater than self.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 7 through April 13, 2019, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country and pledging to make service a part of their daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



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